82D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 695

CONFIRMING AND ESTABLISHING THE TITLES OF THE STATES TO LANDS BENEATH NAVIGABLE WATERS WITHIN STATE BOUNDARIES AND TO THE NATURAL RESOURCES WITHIN SUCH LANDS AND WATERS AND PROVIDING FOR THE USE AND CONTROL OF SAID LANDS AND RESOURCES AND FOR THE CONTROL, EXPLORATION, DEVELOPMENT, AND CONSERVATION OF CERTAIN RESOURCES OF THE CONTINENTAL SHELF LYING OUTSIDE OF STATE BOUNDARIES

JULY 12, 1951.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. FELLOWS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 4484]

The Committee on the Judiciary, to whom was referred the bill (H. R. 4484) to confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and to the natural resources within such lands and waters, to provide for the use and control of the lands and resources, and to provide for the use, control, exploration, development, and conservation of certain resources of the Continental Shelf lying outside of State boundaries, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

INTRODUCTION

H. R. 4484 is similar to H. R. 8137, Eighty-first Congress, second session, favorably reported by this committee to the House of Representatives on May 17, 1950, and is also similar in many respects to H. R. 5991 on which hearings were held on August 24, 25, and 29, 1949 by Subcommittee No. 1 of the Committee on the Judiciary of the House of Representatives. Hearings were held on June 6, 1951 on House Joint Resolution 131 by the same subcommittee that conducted the hearings on H. R. 5991. During the hearing on House Joint Resolution 131, the records of all previous hearings on H. R. 5991 and a companion bill, H. R. 5992, and the records of the joint hearings

before the Committee on the Judiciary of the House and a special subcommittee of the Senate Judiciary Committee, Seventy-ninth Congress, first session, held for 3 days in June 1945 on House Joint Resolution 118 and similar resolutions; hearings before the Senate Judiciary Committee, Seventy-ninth Congress, second session, held for 3 days in February 1946 on Senate Joint Resolution 48 and House Joint Resolution 225; joint hearings before the Committees on the Judiciary, Eightieth Congress, second session, held for 17 days during February and March 1948 on S. 1988 and similar House bills; hearings before the Senate Committee on Interior and Insular Affairs, Eighty-first Congress, first session, held for 6 days during October 1949 on S. 155, S. 923, S. 1545, S. 1700, and S. 2153; hearings before the Senate Committee on Interior and Insular Affairs, Eighty-first Congress, second session, held for 6 days during August 1950 on Senate Joint Resolution 195; and hearings before the Senate Committee on Interior and Insular Affairs, Eighty-second Congress, first session, held for 6 days in February, March, and April 1951 on Senate Joint Resolution 20 and S. 940, were referred to as being supplementary to the instant hearing and were made available to the subcommittee.

Testimony was received at the hearings on House Joint Resolution 131 from the Secretary of the Interior and from the Attorney General of the United States.

Testimony was also received at the hearings on H. R. 5991 and H. R. 5992 from the Secretary of the Interior; the Solicitor General of the United States; the Bureau of the Budget; Congressman Sam Hobbs, of Alabama; representatives of the National Association of Attorneys General, the attorneys general of California, Florida, Kansas, Louisiana, Maryland, Pennsylvania, South Carolina, and Texas; the land commissioner of Texas; the State Land Commission of California; the American Association of Port Authorities, representatives of other port authority associations; and five witnesses representing oil and gas lessees of offshore submerged lands. Resolutions passed by the legislatures of California, Florida, Maine, Maryland, North Carolina, and Oregon were received.

The witnesses at the hearings on House Joint Resolution 131 agreed that the various committees of Congress had conducted exhaustive hearings on the subject matter of the two resolutions. Every witness who desired to be heard was heard.

IMPERATIVE NEED FOR LEGISLATION

All agree that only the Congress can resolve the long-standing controversy between the States of the Union and the departments of the Federal Government over the ownership and control of submerged lands. This controversy, originating in 1938, has been before the Seventy-fifth, Seventy-sixth, Seventy-ninth, Eightieth, Eighty-first, and Eighty-second Congresses. The longer it continues, the more vexatious and confused it becomes. Interminable litigation has arisen between the States and the Federal Government, between applicants for leases under the Federal Mineral Leasing Act and the Departments of Justice and Interior, and between the States and their lessees. Much-needed improvements on these lands and the development of strategic natural resources within them has been seriously retarded. The committee deems it imperative that Congress resolve

this needless controversy at the earliest possible date and bring to an end, once and for all, the confusion, chaos, inequities, and injustices that have resulted from the inaction of Congress.

LITIGATION HAS NOT SETTLED THE CONTROVERSY

When this committee reported favorably H. R. 8137 the cases of *United States* v. *Texas* and *United States* v. *Louisiana* were pending in the Supreme Court of the United States. Also was pending the controversy between the United States and the State of California, involving the location of the line between the inland waters and the marginal sea, which arose out of the case of *United States* v. *California* (332 U. S. 19). The Texas [1] and Louisiana [2] cases have since been decided, the opinion in the Texas case having been rendered by a divided court—4 to 3. However, a controversy now exists between the United States and the State of Louisiana as to the location of the line between the inland waters of Louisiana and the marginal sea. It is reasonable to anticipate that the dispute will continue for a long period of years, unless appropriate legislation is enacted by the Congress, for a similar dispute which arose on June 23, 1947, between the United States and the State of California has not yet been settled by the Supreme Court of the United States.

Decrees were entered in the Texas and Louisiana cases on December 11, 1950, enjoining the States and their lessees from producing oil and gas from the submerged lands within their boundaries outside of their inland waters, but decrees have not yet been entered fixing the dividing line between inland waters and the marginal sea.

The Attorney General of the United States testified that although Texas and Louisiana and their lessees had been enjoined from producing oil and gas from the submerged lands, no department of the Federal Government now has the authority to manage or lease the submerged lands or to drill new wells or to produce the wells heretofore drilled under State authority. While the Secretary of the Interior, purporting to act under his inherent powers to protect the property of the United States, has entered and from time to time renewed orders authorizing the Texas and Louisiana lessees to continue operating their producing wells, the authority given has been for relatively short periods of time, and does not include permission to drill new wells.

The need for oil is even greater now that it was when this committee reported favorably H. R. 8137. Because of such urgent need the Secretary of the Interior and the Attorney General of the United States have urged the immediate enactment of House Joint Resolution 131, identical with Senate Joint Resolution 20, on which the Senate Committee on Interior and Insular Affairs conducted hearings on March 28 and April 10, 1951. The Secretary of the Interior, in urging the enactment of House Joint Resolution 131, testified as follows:

> In the light of the strategic importance of oil to our defense effort and our economy, the executive branch of the Government should inaugurate as quickly as possible for the submerged coastal lands an oil and gas development program, consistent with conservation and all other national interests. The situation in the Gulf of Mexico is particularly urgent because of the potentialities of the

[1] *United States* v. *Texas* (339 U. S. 707).
[2] *United States* v. *Louisiana* (339 U. S. 699).

Continental Shelf there for greatly expanded production of oil. The final decrees in the Louisiana and Texas cases were entered by the Supreme Court on December 11, 1950, and all new development in the Gulf of Mexico has been at a standstill since that date.

While the committee believes that the litigation which has brought to a complete "standstill" all new development in the Gulf of Mexico makes absolutely necessary the immediate enactment of legislation on the subject matter, it is firmly of the opinion that permanent legislation covering each phase of the controversy should now be enacted. This will be accomplished by H. R. 4484, which would bring about the immediate resumption of oil and gas operations on the submerged lands, and would finally and completely settle all issues between the United States and the States and their lessees.

HISTORY OF H. R. 4484

Following the failure of the Senate in 1948 to act before adjournment either upon H. R. 5992 (passed by the House on April 30, 1948, by a vote of 257 to 29) [3] or its companion bill in the Senate, S. 1988 (reported favorably by the Senate Judiciary Committee on June 10, 1948),[4] negotiations were initiated between the Speaker of the House, the Attorney General of the United States, the Secretary of the Interior, and officials of various States in an effort to define the area, if any, within which substantial agreement might be reached in this controversy. These negotiations, which continued during the months of May, June, and July 1949, were finally terminated inasmuch as it appeared impossible to reach any accord on certain fundamental issues involved. Consequently two bills were introduced. One, H. R. 5991, which is now H. R. 4484 with perfecting amendments, contained language acceptable to some State representatives provided it was also accepted by the Federal departments. The other, H. R. 5992, contained language which representatives of the Federal departments agreed at one time to support if the State representatives would support.

In their testimony before the committee on H. R. 5991 and H. R. 5992, Federal representatives declined to endorse H. R. 5992 and urged enactment of S. 923 and S. 2153, which had been introduced at the request of the Justice, Defense, and Interior Departments and were designed to implement the decision in the California case.

After considering the voluminous record on this problem, the committee drafted a new bill in the Eighty-first Congress (H. R. 8137) which is identical with H. R. 4484 without perfecting amendments, and it is of the firmest opinion that the prompt enactment of H. R. 4484 affords a proper, equitable, and workable solution to this long-standing controversy.

PURPOSE OF LEGISLATION

H. R. 4484 consists of three titles. Title I contains the definitions. Title II confirms and establishes the rights and claims of the 48 States, asserted and exercised by them throughout our country's history, to the lands beneath navigable waters within State boundaries and the resources within such lands and waters. Title III provides for the

[3] Congressional Record 5281 (1948).
[4] S. Rept. No. 1592, Calendar No. 1649 80th Cong. 2d sess.

leasing by the Secretary of the Interior of the areas of the Continental Shelf lying outside of the State boundaries.

LANDS BENEATH NAVIGABLE WATERS WITHIN HISTORIC STATE BOUNDARIES

Title II is, in substance, the same as H. R. 5992 in the Eightieth Congress which was passed by the House by a vote of 257 to 29 and which was reported favorably by the Senate Judiciary Committee as S. 1988 but was not acted upon by the Senate prior to adjournment. It is, in substance, the same as House Joint Resolution 225, passed by the Seventy-ninth Congress by a very substantial majority [5] but vetoed by President Truman.[6] It is, in substance, the same as 24 bills introduced in the House in the Eighty-first Congress,[7] and the same as S. 1545 introduced in the Senate jointly by 31 Senators in the Eighty-first Congress,[8] and the same as S. 940 introduced by 35 Senators in this Congress.[9]

Title II merely fixes as the law of the land that which, throughout our history prior to the Supreme Court decision in the California case [10] in 1947, was generally believed and accepted to be the law of the land; namely, that the respective States are the sovereign owners of the land beneath navigable waters within their boundaries and of the natural resources within such lands and waters. Therefore, title II recognizes, confirms, vests, and establishes in the States the title to the submerged lands, which they have long claimed, over which they have always exercised all the rights and attributes of ownership.

The areas affected by title II include lands beneath navigable inland waters, such as lakes (including the Great Lakes), rivers, ports, harbors, bays, etc.; all filled in, made, or reclaimed lands which were formerly beneath navigable waters; and submerged lands seaward from the coast line for a distance of 3 miles or to the original boundary line of any State in any case where such boundary at the time the State entered the Union extended more than 3 miles seaward.

Title II does not affect the vast areas of the Continental Shelf adjacent to the United States which are outside of such State boundaries. This large shelf area, which extends as far as 200 miles seaward in the Gulf of Mexico and 100 miles seaward on the Atlantic coast is dealt with in title III of the bill.

Title II does not affect any of the Federal constitutional powers of regulation and control over the submerged lands and navigable waters within State boundaries. These powers, such as those over commerce,

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[5] 92 Congressional Record 9642, 10316 (1946).

[6] 92 Congressional Record 10660 (1946).

[7] H. R. 71, Hale; H. R. 334, Boggs of Louisiana; H. R. 860, McDonough; H. R. 929, Teague; H. R. 936, Allen of Louisiana; H. R. 1212, Doyle; H. R. 1410, Passman; H. R. 2137, Bramblett; H. R. 2956, Willis; H. R. 3206, Phillips of California; H. R. 3243, Holifield; H. R. 3387, Anderson of California; H. R. 3389, Hinshaw; H. R. 3390, Johnson; H. R. 3398, Sheppard; H. R. 3415, Allen of California; H. R. 3442, Jackson of California; H. R. 3484, Scudder; H. R. 3560, McKinnon; H. R. 3591, Werdel; H. R. 3655, Poulson; H. R. 3779, Engle of California; H. R. 4170, Nixon; H. R. 5600, Weichel.

[8] By Mr. McCarran (for himself, Mr. Baldwin, Mr. Bricker, Mr. Butler, Mr. Byrd, Mr. Cain, Mr. Capehart, Mr. Connally, Mr. Cordon, Mr. Downey, Mr. Eastland, Mr. Ellender, Mr. Frear, Mr. Gurney, Mr. Hickenlooper, Mr. Holland, Mr. Jenner, Mr. Johnson of Texas, Mr. Johnston of South Carolina, Mr. Knowland, Mr. Long, Mr. Malone, Mr. Martin, Mr. Mundt, Mr. O'Conor, Mr. Reed, Mr. Robertson, Mr. Saltonstall, Mr. Schoeppel, Mr. Stennis, and Mr. Thye).

[9] By Mr. Holland (for himself, Mr. Bricker, Mr. Butler of Maryland, Mr. Butler of Nebraska, Mr. Byrd, Mr. Cain, Mr. Capehart, Mr. Carlson, Mr. Connally, Mr. Cordon, Mr. Duff, Mr. Eastland, Mr. Ellender, Mr. Frear, Mr. Hendrickson, Mr. Hickenlooper, Mr. Jenner, Mr. Johnson of Texas, Mr. Johnston of South Carolina, Mr. Knowland, Mr. Long, Mr. Malone, Mr. Martin, Mr. McCarran, Mr. McClellan, Mr. Mundt, Mr. Nixon, Mr. O'Conor, Mr. Robertson, Mr. Saltonstall, Mr. Schoeppel, Mr. Smathers, Mr. Stennis, Mr. Taft, and Mr. Thye).

[10] *United States* v. *California* (332 U. S. 19 (1947)).

navigation, flood control, national defense, and international affairs, are fully protected. Title II also gives to the Federal Government the preferred right to purchase, whenever necessary for national defense, all or any portion of the natural resources produced from these submerged lands.

On April 21, 1948, in House Report 1778,[11] the Committee on the Judiciary of the House of Representatives treated in full the problem dealt with in title II of this bill. That report sets forth in detail the reasons which lead only to the conclusion that this bill must inevitably be enacted. No new evidence has been presented to the committee which justifies any change whatever in the conclusions reached in that report. There exists today the same compelling reasons of justice, fairness, and equity that led to the adoption of that report and the subsequent passage of the same legislation by an overwhelming vote of the House.

Therefore, this committee adopts in full such House Report 1778 which appears in full in the appendix hereto and is expressly made a part of this report.

CONTINENTAL SHELF OUTSIDE OF HISTORIC STATE BOUNDARIES

What is the Continental Shelf?

Continental shelves have been defined as those slightly submerged portions of the continents that surround all the continental areas of the earth. They are a part of the same continental mass that forms the lands above water. They are that part of the continent temporarily (measured in geological time) overlapped by the oceans. The outer boundary of each shelf is marked by a sharp increase in the slope of the sea floor. It is the point where the continental mass drops off steeply toward the ocean deeps. Generally, this abrupt drop occurs where the water reaches a depth of 100 fathoms or 600 feet, and, for convenience, this depth is used as a rule of thumb in defining the outer limits of the shelf.

Along the Atlantic coast, the maximum distance from the shore to the outer edge of the shelf is 250 miles and the average distance is about 70 miles. In the Gulf of Mexico, the maximum distance is 200 miles and the average is about 93 miles. The total area of the shelf off the United States is estimated to contain about 290,000 square miles, or an area larger than New York, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, and Kentucky combined. The area of the shelf off Alaska is estimated to contain 600,000 square miles, an area almost as large as Alaska itself.

That part of the shelf which lies within historic State boundaries, or 3 miles in most cases, is estimated to contain about 27,000 square miles or less than 10 percent of the total area of the shelf and is covered in title II of the bill. The principal purpose of title III is to authorize the leasing by the Federal Government of the remaining 90 percent of the shelf.

Necessity for legislation

Representatives of the Federal departments, the States, and the offshore operators all urged the importance and necessity for the enactment of legislation enabling the Federal Government to lease for oil

[11] H. Rept. 1778, 80th Cong., 2d sess.

and gas operations the vast areas of the Continental Shelf outside of State boundaries. They were unanimously of the opinion, in which this committee agrees, that no law now exists whereby the Federal Government can lease those submerged lands, the development and operation of which are vital to our national economy and security. It is, therefore, the duty of the Congress to enact promptly a leasing policy for the purpose of encouraging the discovery and development of the oil potential of the Continental Shelf.

The committee is also of the opinion that legislative action is necessary in order to confirm and give validity to Presidential Proclamation 2667 of September 8, 1945, wherein the President, by Executive declaration asserted, in behalf of the United States, jurisdiction, control, and power of disposition over the natural resources of the sub soil and sea bed of the Continental Shelf. Many other nations have made assertions to a similar effect with respect to their continental shelves, and the committee believes it proper and necessary that the Congress make such an assertion in behalf of the United States. Such assertion is made in section 8 of the bill.

H. R. 4484 does not vest in the States the power to take or dispose of the natural resources of the parts of the Continental Shelf outside the original boundaries of the States. That power is vested by H. R. 4484 in the Secretary of the Interior even though some States have extended their boundaries as far as the outer edge of the shelf. Section 8 of H. R. 4484 asserts as against the other nations of the world the claim of the United States to the natural resources in the Continental Shelf. This Nation's claim to the natural resources was strengthened by the earlier action of some of the States in leasing, and consequently bringing about the actual use and occupancy of the Continental Shelf. The benefits flowing to the United States from such State action was recognized by the Supreme Court in the Louisiana case, for it said:

> So far as the issues presented here are concerned, Louisiana's enlargement of her boundary emphasizes the strength of the claim of the United States to this part of the ocean and the resources of the soil under that area, including oil.[12]

Area of agreement

A comparison of the leasing provisions contained in H. R. 5991, as originally introduced (which has now become H. R. 4484), and H. R. 5992 shows a wide area of agreement and identical language on many subjects, such as on leasing through competitive bidding; on many procedural matters in connection with the mechanics of leasing, such as notice and advertising and what they shall contain; on the size of leasing units; on the terms of the lease, such as length of primary term, royalty, and rental rates, and extension of a lease term by additional drilling operations under specified conditions; on the cancellation and forfeiture of leases; on the applicability of many sections of the Federal Mineral Leasing Act; on geological and geophysical operations; on extension of the respective States' police powers, including those of taxation and conservation, to oil and gas operations in the shelf off their respective shores; on most of the procedural matters governing an exchange of Federal leases for existing State leases in the Continental Shelf; and on continued operations under State leases pending an exchange.

[12] *United States* v. *Louisiana* (339 U. S. 705, 706).

The committee in drafting the amendments to H. R. 5991 which have been incorporated into H. R. 4484 does not believe it should disregard the substantial progress made in the conferences between State and Federal officials toward an agreement on these leasing provisions as is shown by a comparison of the two bills.

The leasing provisions of H. R. 4484 are substantially similar to the leasing provisions of House Joint Resolution 131 with certain amendments acceptable to the author of the bill, and the Departments of Justice and Interior have endorsed and supported House Joint Resolution 131 with the amendments.

S. 923

The committee has also studied S. 923, the bill originally introduced in the Senate in February 1949, at the request of the interested Federal departments and to the support of which representatives of the Justice and Interior Departments reverted in earlier hearings before this committee.

No bill similar to S. 923 has been introduced in this Congress. The committee, in an effort to fully and completely solve the controversy, has again studied the provisions of S. 923, which was formerly supported by the departments of the Government as a final and permanent solution of the controversy between the United States and the States.

The committee in previous Congresses received much evidence showing the high costs, the large capital investment, and the great physical and financial risks involved in the hazardous business of exploring and drilling for oil beneath the open seas, which has been accomplished as far as 27 miles offshore and 75 miles from a shore base.

The purpose of establishing a procedure for the leasing of these submerged lands is to encourage the earliest possible discovery and development of their oil potential so as to help provide the additional reserve productive capacity necessary to meet the Nation's petroleum requirements when we are suddenly faced, as we are now, with a grave national emergency.

Any operator who would be willing to engage in exploring the Continental Shelf—the most costly and hazardous venture ever undertaken in the continuous search for new oil reserves—must of necessity know in advance of his undertaking exactly what his obligations will be. Otherwise, he cannot attempt to calculate his risks.

The committee believes that the enactment of legislation similar to S. 923 would defeat the primary purpose of the legislation—namely, to secure discovery and development—for the plain reason that that bill delegates to the executive branch of Government such broad and sweeping authority and discretion that no one trying to operate under its provisions would know where he stood from day to day. No one undertaking the expensive exploration work in the open ocean, with all the costly and expensive equipment required, would know whether he would ever have an opportunity to secure a lease or, if he had an opportunity, what provisions such a lease might contain. If he does secure a lease, he can be deprived of the power to make decisions on important questions of operations and management which normally and rightfully should be his. If he should make a discovery, he would not know how much of his discovery he could retain or when his lease might be altered or canceled by unilateral

action by the Government and his investment in effect confiscated. Reference will be made to some of these provisions in the following discussion of the leasing provisions of H. R. 4484.

Exploration provisions

In a new area such as the Continental Shelf, the first operation is exploration.

Section 16 of H. R. 4484 recognizes the right of any person, subject to the applicable provisions of law, or of any agency of the United States to conduct geologic or geophysical explorations in the Continental Shelf which do not interfere with or endanger actual operations under any lease. These provisions are practically identical with those in H. R. 5992 and S. 923.

Witnesses described in some detail the nature of geophysical operations on the open waters of the Gulf of Mexico. Considerable emphasis was placed on the fact that the petroleum industry has been diligently working for a period of over 10 years to modify and adapt various geophysical finding instruments for successful use in water operations, and that it was not until 1945 that techniques had advanced to a point where it seemed feasible to employ these methods in the open sea. The evidence showed that large areas of the Gulf can be covered rapidly, and the experience of a number of operators shows that it is impractical and too expensive to develop and utilize specially trained exploration crews and special equipment, much of which cannot be used elsewhere, for work in the open sea unless relatively large areas are open for exploration. Normally it requires from $30,000 to $40,000 a month to keep an offshore seismic crew afloat; about $40,000,000 has been spent on geophysical work alone in the Gulf of Mexico, to which could be added conservatively about $5,000,000 for basic offshore research.

Finding oil calls for a variety of efforts by a number of operators, and by a policy of free and open exploration a number of operators may explore the same areas and may compete in the bidding, thereby increasing the return to the Government and also greatly enhancing the chances of discovering oil or gas in the area. Thus, as more and more operators engage in exploration, the chances of finding oil and gas in the Continental Shelf increase.

The committee has considered and rejected the idea of a provision under which a permit or lease covering a sizable area would be granted for exploration purposes, with the lessee being required in a given period (1 to 5 years) to select certain acreage to be retained and to give up the remainder, such as was proposed in S. 923 or such as is the practice under the Mineral Leasing Act of 1920. In the committee's opinion, those provisions of the Federal Mineral Leasing Act, which have operated successfully as applied to dry-land operations, would not be as effective if applied to the operations in the open oceans where there exist so many entirely different problems. The committee believes the Federal Government should benefit from the successful experience the States have had in their leasing of parts of the Continental Shelf. Any method of fencing off areas for exploration would retard competition and development and be unwise, particularly in view of the limited number of operators who can afford the expense and risks of offshore operations.

Because of the longer time required to drill offshore wells and thereby define the limits of a discovery, any provision requiring a forced selection of that acreage which an operator can retain, such as those in S. 923, might force him to give up a large part of his discovery. Such a requirement would add an unnecessary burden to an already burdensome undertaking. The committee has concluded that adequate development will be better assured by the provisions for a short primary term and small-size leasing units, as subsequently discussed, than by any forced selection method.

Summary of leasing policy

Section 9 of H. R. 4484 requires the Secretary of the Interior, when requested by a responsible operator, or when he believes there is a demand for the purchase of leases, to offer for sale on competitive sealed bidding oil and gas leases upon unleased areas of the Continental Shelf. Sales are to be made to the responsible and qualified bidder bidding the highest cash bonus per leasing unit. Appropriate notice provisions are provided under which 30 days' notices of such sales are to be given by the Secretary, the notices to describe the tract to be leased, define the minimum bonus per acre which will be accepted, the amount of royalty and the amount of rental per acre per annum, and the time and place at which the bids would be opened. Leasing units are required to be reasonably compact in form and area and to contain not less than 640 acres nor more than 2,560 acres if within the known geologic structure of a producing oil and gas field, and not less than 2,560 acres nor more than 7,680 acres if outside the known geologic structure of a field. Leases are to be for a primary term of 5 years and as long thereafter as oil or gas is produced in paying quantities, and are to contain provisions requiring the exercise of reasonable diligence by the lessee and requiring the lessee to conduct operations in accordance with sound oil-field practices. Royalties are fixed at not less than 12½ percent of the amount or value of production saved, removed, or sold from the leasing unit, and rentals are fixed at $1 per acre per annum for the second and subsequent years during the primary term of the lease. Provision is also made for the cancellation of any lease by appropriate court proceeding for failure of the lessee to comply with any of its provisions or with the provisions of the law. Nine sections of the Federal Mineral Leasing Act are made applicable to these lands, and the leases may contain other terms and provisions consistent with the provisions of the act that may be prescribed by the Secretary.

Competitive bidding

The Secretary would sell the leases upon the basis of competitive sealed bids to be opened in public. In the committee's opinion, competitive bidding is the only sound basis upon which leases should be granted. Such procedure gives all interested operators a chance to secure leases upon the leasing units which are the subject of bidding. H. R. 4484, H. R. 5992, and S. 923 all provide for competitive bidding. Conclusive proof that this method is sound and in the public interest is shown by the experience of the States of Texas and Louisiana in selling leases on this area on a competitive bidding basis.

Size of leasing units restricted

The committee has given consideration to the size of the leasing units and believes that the sizes stipulated in the bill are appropriate. By making provision for leases of areas relatively small in size, more competition will be invited, which will result in more intensive development. Prompt and adequate development will be assured by restricting the size of the leasing units and by fixing the relatively short primary term of 5 years for each lease.

No total acreage limitations

The committee considers that any limitation on the total amount of acreage which may be held under lease by any one operator is undesirable and would adversely affect the discovery and development of these submerged lands.

The Continental Shelf off the United States, excluding Alaska, embraces some 185,800,000 acres, divided approximately in three regions, as follows:

	Acres
Pacific Ocean	11, 900, 000
Gulf of Mexico	92, 300, 000
Atlantic Ocean	81, 600, 000

In S. 923, the Federal departments advocated a ceiling of 128,000 acres (of which not more than 30,720 could be producing leases) which any person could hold under lease in any one of the three regions. This would amount to approximately one-tenth of 1 percent of the total acreage in the Gulf of Mexico and Atlantic regions and about 1 percent of that in the Pacific. In H. R. 5992, the principle of a ceiling was advanced but the number of acres fixing the ceiling was left blank.

At present there are only a limited number of operators who have the technical staffs, special equipment, and the financial resources required to undertake the exploration and development of lands under the open sea. Only about 30 operators have seen fit to bid for leases in the Gulf of Mexico. The testimony showed that present operators have spent years in attempting to solve the many unique problems presented by this type of venture, in building organizations qualified to undertake the work, and in acquiring the know-how of operating under the adverse physical conditions they face. Much of their investments have been in years of research, planning, and training of specialized staffs and in vast amounts of marine equipment which cannot be utilized elsewhere. If those who are now operating in the open Gulf are faced with acreage limitations, they will be forced to disband their exploratory organizations and dispose of their equipment, since they cannot be utilized once the maximum acreage has been acquired. Moreover, it is extremely improbable that new operators would undertake the costly initial expenditures required for staffs and equipment inasmuch as the extent of their utilization would be limited.

There is no need for an acreage restriction in so vast an area where the risks are high, the organizations required are extensive, and the expenditures are fantastic. Competitive bidding for leases, short primary terms, relatively small leasing units, and the high costs involved in operations will confine operators to relatively small areas, will prevent concentration of holdings in any one operator, and will thus insure wide ownership of leases among the limited number of qualified operators.

The practical effect of an acreage limitation of any sort would be in effect to make it prohibitive for qualified operators to carry on Continental Shelf operations. Stated in another way, the Government, by adopting acreage limitations, will in effect be legislating itself out of customers for leases and will be retarding the development of the Continental Shelf resources.

Terms of lease

An important element of sound leasing policy is fixing the terms of a fair lease. This is a matter for legislative determination and the committee believes it desirable to give consideration to the terms of leases which have been developed and are in general use in the industry after a long period of trial and error and to the terms of leases granted by the coastal States under which operations in the Continental Shelf have been conducted.

The great risks involved in offshore operations make it important that the lessee know what is required of him under his lease so as to permit him in some measure to evaluate his risks. Under commercial leases and under leases executed by the coastal States, the lessee, who bears the risks of the venture, and not the lessor, who does not share in the risks, is in charge of the operations and manages and controls these operations, subject to the lease provisions and applicable conservation laws. The difficulties, expenses, and extreme hazards involved in offshore drilling make it even more imperative that the lessee have control of his operations within the confines of his obligations as expressly fixed by the lease and subject to applicable conservation laws.

A corollary to this point is that the lease should not be subject to unilateral change by the Government or to cancellation except through court action for breach of a condition which, under legal principles, would entitle the Government to cancellation.

Powers reserved to the United States

Section 15 (a) of the bill provides that in time of war or when necessary for national defense, the President or the Congress shall have the power to terminate any lease or to suspend operations under any lease, in which event the lessee is to be paid just compensation. When a lessee buys a lease, he acquires a property interest, and, in accordance with constitutional principles, he should not be deprived of his property without just compensation therefor.

Section 15 (b) provides that the Secretary of Defense, with the approval of the President, shall have the power to prohibit any operations in those areas of the shelf as are needed for navigational purposes or for national defense. The committee is of the opinion that this provision fully and adequately protects the interests of the United States. The record is conclusive that the setting aside of large areas on the theory they will provide petroleum reserves for emergencies has long since been disproved as impractical. Experience has demonstrated that the only practical reserve of petroleum for emergencies is a fully developed reserve of excess productive capacity that can be made available immediately. Thus, the Continental Shelf should not be "locked in" but should be explored and developed.

Section 15 also retains in the United States the right of first refusal to purchase all or any portion of the production from the shelf when

necessary for the national defense, and the right to extract helium from all gas produced from the shelf.

Application of State police powers

Section 8 of the bill provides that, except to the extent that it is exercised in a manner inconsistent with applicable Federal laws, the police power of each coastal State may extend to that portion of the Continental Shelf which would be within the boundaries of such State if extended seaward to the outer margin of the shelf. The police power includes, but is not limited to, the power of taxation, conservation, and control of the manner of conducting geophysical explorations. H. R. 5992 contained a similar provision.

The committee considers it proper that the police power of the coastal States be permitted to apply to that portion of the Continental Shelf appertaining to the jurisdiction and control of the United States. Exercise of such power does not confer property rights upon the coastal States but merely permits them to exercise local governmental authority, including taxation and control of the manner of geophysical operations, over the lands in the same manner as the authority applies to lands on the shore.

This type of control is justified under existing legal principles. *Skiriotes* v. *Florida* (313 U. S. 69 (1941)) and *Toomer* v. *Witsell* (334 U. S. 385 (1947)) both hold that the coastal States have the authority to extend their police jurisdiction to the areas involved subject to the approval of Congress. Also significant is the fact that the court in the California, Texas, and Louisiana cases did not hold, and did not undertake to hold, that the States' police power does not extend to operations conducted within the boundaries of the States.

Criminal statutes, workmen's compensation laws, and other police powers should be applicable to Continental Shelf operations. One of the more important police regulations to be applied under this provision is the conservation laws of the coastal States. These State laws are designed to prevent the waste of oil and gas, both under and above ground, and are administered by State conservation agencies through appropriate rules and regulations. They cover a variety of subjects, such as the location, spacing, drilling, and abandonment of wells, control of gas-oil and water-oil ratios, and the rates at which individual wells and pools may be produced.

These laws have been in effect in some States for a period of about 25 years. They have resulted in great benefits to the Nation, and they should be permitted to apply to oil and gas fields discovered on the Continental Shelf off the coastal States just as they apply to fields discovered on the uplands. The laws and the agencies administering them are in existence and are currently functioning, and their application and extension to the areas of the Continental Shelf are merely matters of applying the laws and regulations to new areas close at hand, comparable, indeed, to the situation obtaining when a new field is brought in in the upland area of an oil-producing State.

EQUITIES OF LESSEES FROM THE COASTAL STATES

By reason of the provisions in title II of the bill relating to lands within historic State boundaries, all leases heretofore granted by the States on such lands would continue in effect in accordance with

their terms and provisions and the provisions of H. R. 4484, and the States would be permitted to retain all of the rentals, royalties, and other sums payable thereunder. The equities of such lessees from the coastal States would therefore be fully protected. There remains the question of protecting the equities of those holding leases purchased from the States on the areas of the Continental Shelf beyond the submerged lands covered by title II.

Exchange lease provisions

Section 10 of H. R. 4484 deals with State leases on these Continental Shelf areas. It requires the Secretary of the Interior to issue Federal leases in exchange for State leases covering such areas issued by any State or its political subdivision or grantee prior to January 1, 1949, upon certification by the appropriate State officer or agency that the lessee has complied with the lease terms and the State law. The exchange lease is to be for a term from the effective date of H. R. 4484 equal to the unexpired term of the old lease; provided, however, that if oil or gas was not being produced from such old lease on and before December 11, 1950, then such exchange lease shall be for a term from the effective date of H. R. 4484 equal to the term of the old lease remaining unexpired on December 11, 1950; and the exchange lease is to cover the same natural resources and the same portion of the Continental Shelf as the old lease, and is to provide for payment to the United States of the same rentals, royalties, and other payments as are provided for in the old lease, but may contain "such other terms and provisions, consistent with the provisions of this act, as may be prescribed by the Secretary."

Provision is made that no exchange lease shall be issued unless (1) applied for within 6 months from the effective date of the act (or within the further period provided for in sec. 18) or as may be fixed from time to time by the Secretary; (2) the applicant states in his application that the lease shall be subject to the same overriding royalties as the old lease; (3) the applicant pays to the United States all rentals, royalties, and other sums payable after December 11, 1950, which have not been paid to the lessor under the old lease; and (4) furnishes such surety bond, if any, as the Secretary may require, and "complies with other reasonable requirements as the Secretary may deem necessary to protect the interests of the United States. Provision is made that rentals, royalties, and other sums payable under the old lease before the issuance of an exchange lease may be paid to the State, its political subdivision or grantee, and that the latter shall promptly account to the United States for rentals, royalties, and other sums received after the effective date of the act as to Continental Shelf lands.

H. R. 5992 contained similar provisions, the principal difference being the cut-off date which representatives of the Federal departments formerly urged should be June 23, 1947, the date of the decision in *United States* v. *California*, instead of January 1, 1949.

The committee rejects as unworkable, inequitable, and extremely unwise provisions similar to those in S. 923 whereby a new Federal commission would be created to which complete and final authority and discretion would be delegated to determine whether it cared to issue an exchange lease; and, if so, what acreage it would cover and what royalty, rental, and other terms, conditions, and provisions it would contain.

Leasing by the States

The committee heard extensive evidence dealing with the rights of State lessees to have confirmation of their leases or to have exchange leases granted to them upon substantially the same terms and provisions as the old leases. Four States—California, Florida, Texas, and Louisiana—have issued leases covering areas off their coasts. Of these, only the leases issued by Florida, Texas, and Louisiana embrace Continental Shelf areas. All of the Florida leases were issued prior to the decision of the United States Supreme Court in *United States* v. *California*, on June 23, 1947. All of the Texas leases and about one-half of the Louisiana leases, covering in the aggregate more than 1,000,000 acres, were issued subsequent to June 23, 1947. The lessees have paid the States in bonuses and rentals around $25,000,000 for these leases. In addition, many millions more have been spent on them in exploration and development operations. The last lease sale was held by Louisiana in October 1948. It is unthinkable that all these investments should be completely wiped out by the arbitrary use of the date June 23, 1947, as the determining factor in exchanging leases.

The committee finds that the operators are entitled, as a matter of equity and right, to the issuance by the Federal Government to exchange leases for State leases covering Continental Shelf areas in accordance with the provisions of H. R. 4484. Its reasons for arriving at this conclusion follow:

State's lessees proceeded in accordance with applicable law

All of the Continental Shelf leases involved were issued at times when there was no Federal claim to the areas in which they were located. *United States* v. *California*, decided on June 23, 1947, dealt only with the 3-mile belt off the shores of that State. It did not involve areas off the shores of other States. No Federal claim was made against Texas and Louisiana until motion for leave to file suit against these States was filed by the United States Attorney General in the Supreme Court on December 21, 1948, and no leases have been issued since this date.

The leases embracing Continental Shelf areas executed by Texas and Louisiana were made pursuant to acts of their legislatures extending their seaward boundaries. In 1938, Louisiana passed an act extending her seaward boundaries to 27 marine miles. Texas had taken similar action in 1941 and later, in 1947, further extended her boundaries to the outer limits of the Continental Shelf.

These assertions of political jurisdiction by the legislatures of the two States are not subject to judicial review and the operators, being citizens of or doing business within the declared boundaries of the States, had no occasion to question such State actions and, indeed, under judicial precedents could not have been heard to raise questions in the courts concerning these actions.

Moreover, at the time Louisiana and Texas extended their seaward boundaries to 27 marine miles, the United States was not claiming ownership or jurisdiction and control over the Continental Shelf. Actually, some years earlier the State Department had taken the position that the United States had no jurisdiction over the ocean bottom of the Gulf of Mexico beyond the territorial waters adjacent

to the coast and that therefore it was not in a position to grant a lease on this area.

In reality, Texas and Louisiana were not asserting rights in conflict with those being asserted by the United States at the time. Under the law a State has the power to exercise control over its citizens in exploring for and developing natural resources within its boundaries as fixed by its legislature so long as Congress has not enacted contrary legislation. This was held in *Skiriotes* v. *Florida* (313 U. S. 69 (1941)). The same ruling was made in *Toomer* v. *Witsell* (324 U. S. 325 (1947)), holding that under a South Carolina statute, South Carolina has jurisdiction over the 3-mile belt off the shore of that State so as to permit it to control shrimp fishing in the area.

Furthermore, the United States did not dispute the actions taken by the two States. While on September 8, 1945, President Truman issued Proclamation 2667 declaring that the natural resources of the subsoil of the sea bed of the Continental Shelf adjacent to the United States were subject to its jurisdiction and control, Executive Order 9663, issued on the same day, provided that neither it nor the proclamation should affect the determination of any issue between the United States and the several States relating to the ownership and control of the Continental Shelf either within or outside the 3-mile limit. From their own provisions it is clear that the proclamation and Executive order were merely an assertion of the jurisdiction and control as against foreign nations and merely the means of placing other countries on notice of the policy to be followed by the United States with reference to the resources of the Continental Shelf. This view is confirmed by the White House press release issued along with the proclamation and order.

Moreover, the proclamation does not have the effect of annexing territory to the United States or of extending the boundaries of the Nation, since under clearly established precedents any such annexation or extension requires congressional authorization.

As previously mentioned, no Federal claim against Louisiana and Texas was made until motion for leave to file suit against these States was filed by the United States Attorney General in the Supreme Court on December 21, 1948. No Federal claim has yet been made against Florida. All of the leases executed by these States were issued prior to December 21, 1948. Up to that time, the States had the right to grant leases, but the Federal Government does not yet have this right.

The equities of the operators were recognized by the Honorable Tom Clark, then Attorney General, who in the course of his argument in the California case stated that the legislation which would be recommended to Congress should—

> establish equitable standards for the recognition of investments made by private interests and should offer a basis for the continued operation of private establishments wherever consistent with the national interest and on terms that would be fair and just under all circumstances.

A similar statement was contained in the brief filed by the Government in the California case. The provisions of H. R. 4484 are designed to give effect to these assurances.

Analogy to lands acquired by cession, annexation, or discovery

In the past, where lands or territories have been acquired by the United States either by cession, conquest, or annexation, the treaties,

such as those entered into with Spain on the purchase of Florida, and with Mexico on the acquisition of California, have provided a recognition of such individual property rights. A similar policy is observed when a new territory or new resource is brought under national dominion by an individual through discovery. While the individual, of course, lays claim to new lands or new resources in the name of his sovereign and not as an individual, the nation involved, through its legislative and executive branches, usually recognizes and confirms title to the resources in the individual who makes the discovery. This doctrine has found application in *Jones* v. *United States* (137 U. S. 202, 34 L. ed. 691 (1890)), which involved an act of Congress allowing the President to vest exclusive mining rights in guano to an individual who discovered an island containing such deposits.

Section 8 of H. R. 4484 asserts Federal jurisdiction and control over the Continental Shelf areas beyond original State boundaries, thus bringing the lands and resources within such areas into the same legal status as those acquired by the United States through cession or annexation; in the alternative, such lands and resources are subject to the doctrine of discovery. Adherence to the policy heretofore observed in connection with similar lands and resources brought under national dominion requires, as a matter of policy and law, that the property rights of individuals in and to such lands and resources be recognized and confirmed.

Practical reasons for exchanging leases

Aside from legal considerations, sound practical reasons require that the equities of the operators be recognized. Exploring and drilling for oil on the Continental Shelf is a venturesome, pioneering undertaking. All of the operations are hazardous, costly ventures that require large amounts of risk capital and no assurance of return. Offshore drilling has imposed problems in the construction of drilling platforms, in the conduct of drilling operations, in the transportation of men and materials from and to the shore, and in the measures taken to protect against weather far more serious than have been encountered in any comparable type of operation. As of February 14, 1951, 235 wells had been drilled on leases sold by the States of Texas and Louisiana, resulting in 91 oil wells, 28 gas condensate wells, 4 dry gas wells, and 112 dry holes. The total oil produced up to that date is estimated at about 9,500,000 barrels. Present production, practically all of which is off Louisiana, amounts to 20,000 barrels per day. Offshore operators have spent in excess of $250,000,000 in the search for oil in the Gulf of Mexico. The gross revenue of oil produced has amounted to about $20,000,000.

The operators who up to now have carried out the geophysical exploration and the costly and hazardous drilling operations are in a better position to develop and produce the natural resources of the Continental Shelf than are others who might be given leases subsequently and who have no knowledge of the former operations. Furthermore, the alternate procedure of taking the leases away from the present owners and transferring them to other operators would not only involve an unjust forfeiture, but would cause a substantial delay in securing development of the resources and result in a waste through the dismantling of organizations which have heretofore been developed and perfected in carrying out those operations. Accordingly,

every practical consideration justifies the equity and reasonableness of the provisions of H. R. 4484, recognizing the rights and equities of the present operators.

The operators involved purchased their leases in good faith, relying upon the laws of the respective States in effect at the time and since there was no antagonistic Federal claim being asserted at the time, the committee believes they are entitled, as a matter of equity and right, to Federal leases upon substantially the same terms and embracing the same minerals as those covered by the old leases. In essence the committee believes there are but two questions involved: (*a*) Is the lease valid under State law, and (*b*) is it still in effect?

Cut-off date

H. R. 4484 fixes January 1, 1949, as the date of leases for which exchange leases may be issued. As previously stated, the representatives of the Federal departments formerly advocated the date of the leases for which exchange leases would be granted as June 23, 1947, the date of the California decision. This position, in view of the fact that no California leases were issued after June 23, 1947, is primarily directed against the operators who have purchased leases from Texas and Louisiana subsequent to this date. Its basis is said to be that after this date operators in the Gulf coast area were on notice that the Federal Government would likely assert a claim to areas off the shores of those States.

The committee has carefully considered these and other arguments presented in favor of the use of June 23, 1947, as the cut-off date and has rejected this idea. The committee believes that every equitable consideration favors the use of January 1, 1949, as the appropriate cut-off date. As stated, no leases were issued by California subsequent to June 23, 1947, and no leases were issued by Texas, Louisiana, or Florida subsequent to October 1948. Moreover, the Government actually asserted no claim to Gulf offshore areas prior to December 21, 1948. Accordingly, the very arguments which require that the equities of the operators be protected and that exchange leases be issued compel the conclusion that exchange leases should be granted for all leases dated prior to January 1, 1949. To use the June 23, 1947, date as a cut-off date for all areas would in fact be to decide that Texas and Louisiana lost their titles at the time that California lost its case.

The same considerations, equities, and reasons for fixing the cut-off date for lease exchanges are equally applicable in using the effective date of the act in section 14 of the bill relating to waiver of liability for past operations on the Continental Shelf.

FEDERAL OFFICIALS NOW RECOGNIZE LESSEES' EQUITIES

As pointed out earlier in this report, the Solicitor General of the United States and the Secretary of the Interior formerly advocated that no Federal lease should be exchanged for a State lease issued subsequent to June 23, 1947. However, since the Supreme Court of the United States refused on December 11, 1950, to require Texas and Louisiana to account to the United States for any sums of money received under State leases prior to June 5, 1950, the Federal officials have ceased urging June 23, 1947, as the cut-off date. Moreover,

the Departments of Interior and Justice in supporting Senate Joint Resolution 20 and House Joint Resolution 131 introduced in this session of the Congress have advocated the enactment of legislation which would recognize the right of each person who purchased a lease from a State prior to January 1, 1949, to continue operations under the lease for the remaining unexpired term thereof. The Solicitor General testified before the Senate Committee on Interior and Insular Affairs in support of Senate Joint Resolution 20, as follows:

> In the administration bill, in previous Congresses, it was proposed that State leases made prior to June 23, 1947, would be ratified or confirmed. In the resolution now before this committee, it is contemplated that State leases made prior to December 21, 1948—the date of the filing of the suits against Louisiana and Texas—and in force and effect on June 5, 1950, would be recognized by the Federal Government. One good reason why this proposal can now be accepted by the Federal Government is that the Supreme Court has declined to order Louisiana and Texas to account to the United States for revenues received under such leases prior to June 5, 1950, the date of the decisions in those cases.[13]

DIFFERENCES BETWEEN H. R. 8137, EIGHTY-FIRST CONGRESS AND H. R. 4484, EIGHTY-SECOND CONGRESS

When the committee reported favorably H. R. 8137 on May 17, 1950, no injunctions had been granted in the Texas and Louisiana cases restraining the lessees from exploring for and producing oil and gas from the submerged lands in dispute. However, such injunctions were issued on December 11, 1950. Consequently, the lessees on December 11, 1950, discontinued paying rents and royalties to the States, and began paying them to the Secretary of the Interior, who has deposited the funds in a special account awaiting congressional action.

Most of the leases sold by Texas and Louisiana were for a term of 5 years, called primary term, and as long thereafter as oil or gas is produced. Under such provisions, a lease upon which oil or gas was not discovered within the primary term, terminated. The injunctions have restrained the lessees from searching for oil or gas during a part of the period in which they had to make a discovery. Therefore, the period during which the lessees have been enjoined from exploring for oil and gas should not be charged against the primary term of the leases. In order to do equity each nonproductive lease should extend for a term from the effective date hereof equal to the term remaining unexpired on December 11, 1950, when the injunctions were issued. This would give to each lessee the same period of time after the effective date hereof in which to discover oil or gas that he had on December 11, 1950, when he was enjoined from conducting exploratory operations.

H. R. 4484 also requires all rents and royalties payable between June 5, 1950, and the effective date of the resolution under leases on lands quitclaimed to the States, and which have not been paid to the States or to the Secretary of the Interior, to be paid to the States within 90 days from the effective date of this bill.

The committee believes that the injunctions issued on December 11, 1950, in the Texas and Louisiana cases make necessary the perfecting amendments contained in H. R. 4484.

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[13] Hearings before the Committee on Interior and Insular Affairs, 82d Cong., 1st sess., on S. J. Res. 20, February 19, 20, 21, and 22, 1951, p. 23.

DIVISION OF PROCEEDS FROM THE CONTINENTAL SHELF

A precedent for allocation of revenues to the States is found in the Federal Mineral Leasing Act of 1920, as amended, which provides for remission to the States of 90 percent of the revenues from the leases on the Federal public domain, 37½ percent being directed to the States in which the lands are located and 52½ percent for reclamation purposes to 17 reclamation States.

Considering that several of the States were first claimants to large portions of the shelf areas, that the States will have to exercise their various police powers over the operations under the bill in vast areas of the shelf off their coasts, and that in reality these areas are merely extensions under comparatively shallow water of the uplands of these States, the committee believes these States have an equity which justified remitting to them a portion of the proceeds received from the shelf. Accordingly and following the precedent of the Federal Mineral Leasing Act, the bill provides for the remission to the respective coastal States of 37½ percent of the proceeds derived from leases on the shelf off their respective coasts.

The remaining 62½ percent is to be paid into the Treasury of the United States and credited to miscellaneous receipts, as recommended by the Bureau of the Budget.

Report No. 1778 of the Eightieth Congress is included in the appendix to supplement this report.

APPENDIX I

80TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 1778

CONFIRMING AND ESTABLISHING THE TITLES OF THE STATES TO LANDS BENEATH NAVIGABLE WATERS WITHIN STATE BOUNDARIES AND NATURAL RESOURCES WITHIN SUCH LANDS AND WATERS AND PROVIDING FOR THE USE AND CONTROL OF SAID LANDS AND RESOURCES

APRIL 21, 1948.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. REED of Illinois, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 5992]

The Committee on the Judiciary, to whom was referred the bill (H. R. 5992) to confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and natural resources within such lands and waters and to provide for the use and control of said lands and resources, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

INTRODUCTION

H. R. 5992 is, in substance, the same as numerous bills introduced in the House.[1] It is substantially the same as S. 1988 introduced in the Senate jointly by 20 Senators.[2] A subcommittee of the Judiciary Committee of the House and a subcommittee of the Judiciary Committee of the Senate conducted joint hearings on these bills for a

[1] H. R. 4999, Bradley; H. R. 5010, Fletcher; H. R. 5099, McDonough; H. R. 5105, Bramblett; H. R. 5121, Allen; H. R. 5128, Jackson; H. R. 5132, Nixon; H. R. 5136, Anderson; H. R. 5162, Allen; H. R. 5167, Poulson; H. R. 5238, Passman; H. R. 5273, Graham; H. R. 5281; Gearhart; H. R. 5288, Russell; H. R. 5297, Gossett; H. R. 5308, Goff; H. R. 5320, Peterson; H. R. 5349, Colmer; H. R. 5372, Mack; H. R. 5380, Teague; H. R. 5443, Jones; H. R. 5461, Horan; H. R. 5531, Hale; H. R. 5536, King; H. R. 5628, Weichel; H. R. 5660, Boggs; H. R. 5860, Chadwick; H. R. 5529, Lemke; H. R. 5885, Celler; H. J. Res. 51, Hébert; H. J. Res. 52, Hinshaw; H. J. Res. 67, Allen of Louisiana; H. J. Res. 81, Gossett; H. J. Res. 157, Bramblett; H. J. Res. 263, Fletcher; H. J. Res. 286, Domengeaux; and H. J. Res. 299, Colmer.

[2] By Mr. Moore (for himself and Mr. McCarran, Mr. Knowland, Mr. Bricker, Mr. Hawkes, Mr. Butler, Mr. Holland, Mr. Eastland, Mr. Martin, Mr. Ellender, Mr. Saltonstall, Mr. O'Conor, Mr. O'Daniel, Mr. Downey, Mr. Connally, Mr. Byrd, Mr. Overton, Mr. Hickenlooper, Mr. Brooks, and Mr. Capper).

total of 17 days, commencing on February 25, 1948, and concluding on March 18, 1948. The following report has been prepared in collaboration with the Senate committee.

AREA OF SUBSTANTIAL AGREEMENT

All agree that Congress must act to clear up the controversy between the States and the Federal Government as to the resources in and beneath navigable waters within State boundaries. All agree that confusion, if not chaos, presently exists and, in the absence of congressional action, will become more pronounced and vexatious. Aside from the afore-mentioned bills introduced in the Congress to preserve the status quo as it was thought to be prior to the California decision, there have been introduced in the Congress S. 2222 and companion bills, prepared by the Justice and Interior Departments, which seek to remove the cloud of the California decision from the long-asserted title of the States in and to the resources beneath inland waters. Also pending are S. 2165 and companion measures, prepared by the Justice and Interior Departments, designed to implement the Federal Government's claim of paramount right and dominion over the resources of the marginal sea. It is agreed that Congress must act in accordance with this committee's recommendations or in accordance with the recommendations of the Federal departments. Inaction will mean increasing confusion, if not chaos, in all the States of the Union as between Federal and State ownership and operation.

I. Support for and Opposition to the Legislation

Supported by public officials

The measure is actively supported by a large number of organizations composed of public officials, among which are (*a*) the National Association of Attorneys General, made up of the attorneys general of the 48 States; (*b*) Conference of Governors, composed of the governors of the 48 States; (*c*) National Association of State Land Officials; (*d*) American Association of Port Authorities; (*e*) National Institute of Municipal Law Officers; (*f*) Council of State Governments; (*g*) Conference of Mayors; (*h*) Interstate Oil Compact Commission; (*i*) National Association of Secretaries of State; and (*j*) Port of New York Authority. Hon. Millard F. Caldwell, Governor of the State of Florida; Hon. J. Strom Thurmond, Governor of the State of South Carolina; Hon. William Tuck, Governor of the State of Virginia; Hon. Frank Carlson, Governor of the State of Kansas; Hon. Beauford H. Jester, Governor of the State of Texas; and Hon. Earl Warren, Governor of the State of California, appeared in person to support the legislation. Numerous other State governors appeared through personal representatives or filed statements in support of the legislation. The attorneys general of 38 States appeared in person or through their assistants and deputies or filed statements urging the adoption of the legislation. Representatives of the State Legislature

of the State of California appeared in person. Resolutions and memorials in support of the legislation were received from a number of State legislative bodies.

Supported by other organizations

Representatives of other organizations appeared to support the bill, including (*a*) American Bar Association, (*b*) Texas Bar Association, (*c*) United States Chamber of Commerce, and (*d*) Independent Petroleum Association of America. Also, numerous organizations submitted statements and resolutions supporting the legislation, including State teachers' associations, civic organizations, and commercial associations.

Opposition

It is opposed by the Departments of Justice, Interior, and National Defense, and by a few persons and their lawyers, who, under the provisions of the Federal Mineral Leasing Act, are attempting to obtain from the Federal Government, for a nominal consideration, oil and gas leases on parts of the submerged lands that are the subject matter of this legislation, some of which applications cover and include submerged lands that have been developed for oil and gas under State leases by the expenditure of millions of dollars and are now producing large quantities of oil.

The bill was opposed by the legislative counsel of the National Grange, who stated, however, that it was the general policy of the Grange to assist cooperative associations, some of which are engaged in the business of producing, transporting, refining, and marketing petroleum and petroleum products to their members and the general public as well, and which have also filed application for Federal oil and gas leases on hundreds of thousands of acres of the submerged lands involved in this legislation. Congressman Sam Hobbs, of Alabama, appeared and discussed with the committee his theory that the "3-mile belt" was incapable of actual ownership by any nation within the common understanding of such term, but that title actually rested in "the family of nations." A Washington correspondent of the St. Louis Post-Dispatch also appeared and expressed his personal opposition to the bill. (See appendix A for complete list of witnesses.)

II. Purpose of Legislation

The purpose of H. R. 5992, like that of House Joint Resolution 225, which passed the Seventy-ninth Congress by a very substantial majority but was vetoed by President Truman, is to confirm and establish the rights and claims of the 48 States, long asserted and enjoyed with the approval of the Federal Government, to the lands and resources beneath navigable waters within their boundaries; subject, however, to the right of the United States to exercise all of its constitutional regulatory powers over such lands and waters.

III. History of Legislation

One hundred and sixty years of unchallenged ownership by the States

Throughout our Nation's history the States have been in possession of and exercising all the rights and attributes of ownership in the lands and resources beneath the navigable waters within their boundaries. During a period of more than 150 years of American jurisprudence the Supreme Court, in the words of Mr. Justice Black,[3] had—

> used language strong enough to indicate that the Court then believed that the States also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not.

That same belief was expressed in scores of Supreme Court opinions and in hundreds of lower Federal courts' and State courts' opinions. Similar beliefs were expressed in rulings by Attorneys General of the United States, the Department of the Interior, the War Department, and the Navy Department. Lawyers, legal publicists, and those holding under State authority accepted this principle as the well-settled law of the land.

As late as 1933, the then Secretary of the Interior, Harold L. Ickes, in refusing to grant a Federal oil lease on lands under the Pacific Ocean within the boundaries of California, recognized:—

> Title to the soil under the ocean within the 3-mile limit is in the State of California, and the land may not be appropriated except by authority of the State.

Claims of States first challenged by Federal officials in 1937

It was not until a few applicants for Federal oil leases and their attorneys continued to insist that the United States owned the soil under navigable waters, that, in the words of Mr. Ickes, "doubt" arose in his mind as to which Government owned the submerged lands. The "doubt" was first publicly expressed in the Nye resolution [4] introduced in the Seventy-fifth Congress in 1938, and was subsequently expressed in the Hobbs and O'Connor resolutions [5] and the Nye and Walsh resolutions [6] introduced in the Seventy-sixth Congress in 1939, all of which failed of enactment. Had the Congress followed the recommendations of the Departments of Interior, Justice, and Navy, by enacting any one of the resolutions, it would have attempted to appropriate for the United States, without compensation to the States, the 3-mile marginal belt as a naval petroleum reserve, and the Attorney General would have been authorized to establish through judicial proceedings the Government's title.

The theory advanced in 1938 and 1939 by the same Federal departments which now oppose H. R. 5992 was to the effect that the United States had no right to appropriate the natural resources within the

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[3] *United States* v. *California* (1947), 91 Law Ed. Advance Opinions p. 1423.

[4] Hearings before the Committee on the Judiciary, House of Representatives, 75th Cong., 3d sess., February 1938, on S. J. Res. 208.

[5] Hearings before Subcommittee No. 4, Committee on the Judiciary, House of Representatives, 76th Cong., 1st sess., March 1939, on H. J. Res. 176 and 181.

[6] Hearings before Committee on Public Lands and Surveys, U. S. Senate, 76th Cong., 1st sess., March 1939, on S. J. Res. 83 and 92.

submerged coastal lands unless the Congress, as the policy-making branch of the Government, asserted what was contended to be a dormant right. They spoke of the right as being "novel" and one never before asserted by the United States under the Constitution, and as being a right which the States had been asserting and enjoying, and would continue to assert and enjoy unless and until the Congress changed the policy of the Federal Government. Congress, however, did not change the long-existing and recognized policy.

Congress in 1946 recognized States' claims

As a result of continuing threats of Secretary of the Interior Ickes to grant Federal leases on portions of the submerged coastal lands, resolutions were introduced in 1945 in the Seventy-ninth Congress, quieting title to these lands in the States. After extensive hearings,[7] these resolutions were passed in 1946 as House Joint Resolution 225.[8] However, the reaffirmation of the well-established policy was voided through a veto by President Truman.[9] The House failed to override the veto.[10]

While the Congress was considering House Joint Resolution 225, the Federal officials, being dissatisfied with the continued refusal of Congress to appropriate property long claimed by the States, instituted on May 29, 1945, a suit against the Pacific Western Oil Corp., a lessee of the State of California to recover part of the submerged lands claimed by California and its lessee.

After House Joint Resolution 225 passed the House by a large vote, and while it was pending in the Senate, the suit against Pacific Western Oil Co. was voluntarily dismissed by Attorney General Clark, and an original action was brought by him in the Supreme Court against the State of California, wherein he alleged that the United States "is the owner in fee simple of, or possessed of paramount rights in and power over" the submerged lands within 3 miles of the California coast. These two suits were instituted and the latter one against California was prosecuted after the Congress had refused in 1938 and again in 1939 requests of the Attorney General and other Federal officials for permission to institute a suit for that purpose.

The House, in failing to override the veto of House Joint Resolution 225 was no doubt influenced, as the President had been, by the pending litigation.

Decision of Supreme Court denying California ownership

On June 23, 1947, the Supreme Court rendered its opinion in the case of *United States* v. *California*, and on October 27, 1947, a decree was entered which reads, in part, as follows:

1. The United States of America is now, and has been at all times pertinent hereto, possessed of paramount rights in, and full dominion and power over, the lands, minerals, and other things underlying the Pacific Ocean lying seaward of

[7] Joint hearings, Committee on the Judiciary, House of Representatives, and a special subcommittee of the Senate Judiciary Committee, 79th Cong., 1st sess., on H. J. Res. 118 et al.; hearings before the Committee on the Judiciary, U. S. Senate, 79th Cong., 2d sess., on S. J. Res. 48 and H. J. Res. 225.

[8] 92 Congressional Record 9642, 10316 (1946).

[9] 92 Congressional Record 10660 (1946).

[10] 92 Congressional Record 10745 (1946).

the ordinary low-water mark on the coast of California, and outside of the inland waters, extending seaward three nautical miles and bounded on the north and south, respectively, by the northern and southern boundaries of the State of California. The State of California has no title thereto or property interest therein.

In the Court's majority opinion, Mr. Justice Black said:

The crucial question on the merits is not merely who owns the bare legal title to the lands under the marginal sea. The United States here asserts rights in two capacities transcending those of a mere property owner.

He then proceeded to define those two capacities as that of national defense and of conducting foreign relations.

Mr. Justice Black, in the majority opinion, stated further:

As previously stated this Court has followed and reasserted the basic doctrine of the Pollard case many times. And in doing so it has used language strong enough to indicate that the Court then believed that States not only owned tidelands and soil under navigable inland waters, but also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not.

Thus the Court by its decision not only established the law differently from what eminent jurists, lawyers, and public officials for more than a century had believed it to be, but also differently from what the Supreme Court apparently had believed it to be.

This committee, having heard the testimony of many able and distinguished State attorneys general, of representatives of the American Bar Association and State bar associations, and of other able and distinguished jurists and lawyers, is of the opinion that no decision of the Supreme Court in many years has caused such dissatisfaction, confusion, and protest as has the California case. We have heard it described in such terms as "novel," "strange," "extraordinary and unusual," "creating an estate never before heard of," "a reversal of what all competent people believed the law to be," "creating a new property interest," "a threat to our constitutional system of dual sovereignty," "a step toward the nationalization of our natural resources," "causing pandemonium," etc.

Power of Congress to reestablish long-accepted policy of State ownership

The committee recognizes that it is within the province of the Supreme Court to define the law as the Court believes it to be at the time of its opinion. However, the Supreme Court does not pass upon the wisdom of the law. That is exclusively within the congressional area of national power. Congress has the power to change the law, just as the Supreme Court has the power to change its interpretation of the law by overruling pronouncements in its former opinions which have been accepted as the law of the land. Therefore, in full acceptance of what the Supreme Court has now found the law to be, Congress may nevertheless enact such legislation as in its wisdom it deems advisable to solve the problems arising out of the decision.

Indeed, the power of the Congress to establish the law for the future as it was formerly believed to be, was, in effect, recognized by the Court in the California case for it held in connection with the lands in question that the power of Congress under article IV, section 3, clause 2 of the Constitution to dispose of territory or other property of the United States was without limitation; and that it would not be assumed that—

Congress, which had constitutional control over Government property, would execute its powers in such way as to bring about injustices to States, their subdivisions, or persons acting pursuant to their permission.

Many witnesses testified that they construed the opinion as an invitation or recommendation to the Congress to consider the legislative question as to whether in the public interest the States should continue in possession of, and exercise State control of, the submerged lands within their boundaries, or the Federal Government should take from the States these lands and hereafter exercise all control over them.

IV. Supreme Court Decision Makes Legislation Necessary

When House Joint Resolution 225 was passed by the Congress, there existed only a threat to the long-established and settled policy of State ownership of these lands. Now, as a result of the reversal of this policy by the Supreme Court's opinion in the California case, there exists, in the words of Attorney General Clark,[11] "a variety of unusually complex problems which must be resolved."

The committee deems it imperative that Congress take action at the earliest possible date to clarify the endless confusion and multitude of problems resulting from the California decision, and thereby bring to a speedy termination this whole controversy. Otherwise inequities, injustices, vexatious and interminable litigation, and the retardment of the much-needed development of the resources in these lands will inevitably result.

Issue of title is confused

While the Supreme Court decreed that California was not the owner of the 3-mile marginal belt, it failed expressly to decree that the United States was the owner. Furthermore, although requested by the Attorney General, and others appearing amici curiae, the Court refused to hold that the United States was the "owner in fee simple" or had "paramount rights of proprietorship" in such 3-mile belt.

"Fee simple" and "proprietorship" are words commonly used in law to denote ownership, while the words "paramount rights in and full dominion over" employed by the Court are foreign to the law of real property.

Attorney General Clark expressing the view that paramount rights and full dominion signified a title even higher than a fee simple testified:

> They said to us in effect, go ahead and get the oil. That is what the effect of the opinion is. What more could the Supreme Court have held? If it held that we had fee simple title, something might come up some day on this particular land. This is a novel decision. This land is under water. It is in the 3-mile belt * * * So they did not want to be bound by any fee simple proposition.
>
> So they could have said fee simple title, they could have said any of the descriptive terms that we use with reference to titles, but they might have found themselves in difficulty later on when someone else might have claimed that all you have said here is that the United States had fee simple title.

Mr. Justice Frankfurter, in his dissenting opinion, had difficulty in determining the meaning and legal significance of the words used by Mr. Justice Black in the majority opinion, stating that:

> The Court, however, grants the prayer but does not do so by finding that the United States has proprietary interests in the area. To be sure it denies such proprietary rights in California.

[11] Letter to the President dated October 30, 1947.

> Of course the United States has "paramount rights" in the sea belt of California—the rights that are implied by the power to regulate interstate and foreign commerce, the power of condemnation, the treaty-making power, the war power. We have not now before us the validity of the exercise of any of these paramount rights. Rights of ownership are here asserted—and rights of ownership are something else. Ownership implies acquisition in the various ways in which land is acquired—by conquest, by discovery and claim, by cession, by prescription, by purchase, by condemnation. When and how did the United States acquire this land?
>
> The fact that these oil deposits in the open sea may be vital to the national security, and important elements in the conduct of our foreign affairs, is no more relevant than is the existence of uranium deposits, wherever they may be, in determining questions of trespass to the land of which they form a part.

Mr. Justice Reed said in his dissent:

> This ownership in California would not interfere in any way with the needs or rights of the United States in war or peace. The power of the United States is plenary over these undersea lands precisely as it is over every river, farm, mine, and factory of the Nation.

Many witnesses were of the opinion that the construction of paramount rights as including fee ownership would, if carried to its logical conclusion, destroy the basic legal distinction between governmental powers under the Constitution on the one hand, and State or private ownership of real property on the other, because the "paramount powers" of the United States do not depend upon whether the point at which they may need to be exercised is above or below low-water mark or on one side or the other of a line dividing a bay from the coastal waters.

Many witnesses expressed the opinion that the title was left suspended in mid-air, leaving the property ownerless, contrary to the basic concept of our common law that legal title to every piece of property must exist in someone; others expressed the view that the Supreme Court held, in effect, that Congress, as the policy-making branch of the Federal Government, had the power, in the first instance, to determine who shall be the owner of the lands.

The theory that title to the 3-mile belt was in "the family of nations," expressed by Congressman Hobbs, of Alabama, was also adhered to by representatives of the Navy Department in 1938 and 1939. With respect to inland waters, Congressman Hobbs agreed that the paramount rights of the Federal Government, as defined by the Supreme Court in *U. S.* v. *California*, might likewise be exercised for the purposes of national defense and international negotiations.

Mr. Justice Black, in speaking for the majority of the Court in the California case, said:

> The very oil about which the State and Nation here contend might well become the subject of international dispute and settlement.

If the Court in making the statement had reference to the military power of a foreign nation to dispute the rights of the States to take oil under submerged lands within their boundaries, then the same statement could correctly be made about oil under uplands, providing, of course, the foreign nation possessed a military force strong enough to compel a settlement by the United States. However, if the statement was made because the Congress had never legislatively asserted on behalf of the United States or the States title to the submerged lands within their boundaries, then we think that is all the more reason why the Congress should now remove all doubt about the title

by ratifying and confirming the titles long asserted by the various States, subject always, of course, to the paramount powers of the Federal Government under the Constitution, which titles have never been disputed by any foreign nation.

The committee is unable to determine whether or not the Supreme Court held that the United States has actual title in and to the submerged coastal lands adjacent to California, but it is obvious that Congress has the power to legislate in any event, for, as the Court said, the Federal Government has—

> the paramount right and power to determine in the first instance when, how, and by what agencies, foreign or domestic, the oil and other resources of the soil of the marginal sea, known or hereafter discovered, may be exploited.

On the other hand, if the Federal Government does have a fee-simple title to these lands and even something greater and paramount to title as contended by the Attorney General of the United States, then the Congress, under the authority of article IV, section 3, clause 2, of the Constitution, has unlimited control over such lands and may dispose of them in such manner as it deems in the public interest. The committee is, therefore, of the opinion that S. 1988, if enacted, will establish, confirm, and vest in the littoral States, which have since the formation of our Union claimed title to the marginal belt, such title and rights as the Federal Government has, subject to the reservations contained therein.

Applicability of California decision to other coastal and Great Lakes States

The Attorney General of the United States testified that he intended to bring in the near future similar suits against other Coastal States and that, although each State would probably urge "special defenses" based upon the law and facts under which it joined the Union, the California decision was a precedent for the suits he intended to bring against other States.

The attorneys general of several Great Lakes States and other qualified witnesses testified that the California case was likewise a precedent which the Federal Government could properly urge in any suit against the Great Lakes States to recover for the Federal Government the submerged areas under the Lakes within the boundaries of such States. These witnesses called attention to the fact that the Supreme Court in *Illinois Central Railroad* v. *Illinois* (146 U. S. 387) held that because the Great Lakes partook of the nature of the open sea, the same rule of ownership would be applied to them that had been followed by the Court with reference to ownership of lands "under tide waters on the borders of the sea." These witnesses also pointed out that the Great Lakes are located on an international boundary and the Federal Government has the same right to conduct international negotiations involving the Lakes as it does with respect to the 3-mile belt off the shore of California.

The Attorney General of the United States when questioned on the applicability of the rule as announced in the California case to the submerged lands of the Great Lakes within the borders of the Great Lakes States was somewhat equivocal. He insisted that Lake Michigan was wholly an inland lake and, consequently, in his opinion, the rule in the California case could not apply in Lake Michigan. He also stated it to be his opinion that the rule would

not apply with respect to the other Great Lakes. However, he was frank to say that this was a personal opinion without study and that he had not conferred with or consulted other members of his staff on this point. The Attorney General also conceded that all of the Great Lakes except Lake Michigan constituted international-boundary waters. Later in the testimony it was developed that the Chief of the Land Division of the Department of Justice and others in that Department had, soon after the Court decided the California case, held the opinion that in the event the United States should discover anything of value in the beds of the Great Lakes that it needed for national defense or which should become the subject of international negotiations, the Government could then, under the theory of the California case, assert its paramount power and full dominion over the lands and resources in such lands lying under the waters of the Great Lakes to the same extent and with the same force and effect as it had done within the 3-mile belt on the coast of California.

Apparently, in anticipation that the rule applicable to California submerged lands would be applied to the Great Lakes, an applicant following the California case applied to the Department of the Interior for a Federal oil lease on a part of Lake Michigan within the boundaries of the State of Michigan; thus, the State of Michigan is at the moment actually confronted with this legal problem, and it follows that the other States bordering on Lake Michigan and the other Great Lakes are directly affected.

The implications in the California decision have clouded the title of every State bordering on the sea or on the Great Lakes, and the committee is unable to estimate how many years it would take to adjudicate the question of whether the decision is applicable to other coastal and to the Great Lakes States. We are certain that until the Congress enacts a law consonant with what the States and the Supreme Court believed for more than a century was the law, confusion and uncertainty will continue to exist, titles will remain clouded, and years of vexatious and complicated litigation will result.

Uncertainty as to what constitutes the marginal sea as distinguished from inland waters

Much testimony was introduced to show the extreme complexities arising in any attempt to locate the precise line demarking the open sea from bays, harbors, ports, sounds, and other inland waters. For example, since the shores are constantly changing, what date should be used to fix the location of the low-water mark? What is a bay, a sound, etc.? At what precise point does a bay become a part of the open sea? Are waters landward of offshore islands inland waters? Are uplands formed by nature subsequent to the date of fixing the low-water mark subject to "the paramount power" of the United States as defined by the Court's opinion? Are uplands which have become submerged to be considered subject to State or Federal control? Are ports which are created by construction of breakwaters a part of the open sea?

The Department of Justice and the State of California are now engaged in a controversy in the Supreme Court over the establishment of a line demarking the 3-mile belt claimed by the United States, and certain bays and harbors claimed by California. This particular controversy involves only three small segments of the California Coast

covering less than 150 of the State's 1,200 miles of coast line. Other similar controversies are inevitable.

The testimony showed that in the first case involving a demarkation line the Federal Government is claiming as a part of the 3-mile belt submerged lands heretofore historically considered and recognized as being within the bays. How long it would require even to litigate these questions on the California coast alone is unknown. If the California decision is applicable to the entire coast line of the United States, as claimed by the Department of Justice, the litigation would be interminable.

Unless S. 1988 is enacted, confusion will exist as to the ownership and taxability of, and powers over, bays and the 3-mile belt, and their development necessarily will be retarded. We consider it against the public interest for the Federal Government to commence a series of vexatious lawsuits against the sovereign States to recover submerged lands within the boundaries of the States, traditionally looked upon as the property of the States under a century of pronouncements by the Supreme Court reflecting its belief that the States owned these lands.

Uncertainty as to resources to which decision is applicable

The Court decreed that the Federal Government has—

paramount rights in and full dominion and power over, the lands, minerals, and other things underlying the Pacific Ocean—

in the 3-mile belt. Despite the fact that the Federal officials now in office disclaim any present desire to take anything except oil, such disclaimer is not conclusive. The testimony shows there is much concern over whether the words "other things" used in the decree include sand, gravel, sponges, kelp, oysters, clams, shrimp, crabs, saltwater-fish, etc. Certainly, if the Government has the "paramount power" and full dominion over the "3-mile belt" and can, therefore, take without compensation one of its resources, it can likewise take all of its resources. A case is now pending in the Supreme Court in which certain individuals are contending that under the decision, the State of South Carolina has no power to regulate fishing off its coast and within the historical boundary of the State.

Uncertainty as to title of inland States to navigable waters within their boundaries

State officials from every inland State in the Union, except three, testified or submitted statements that in their opinion the decision had clouded the long-asserted titles of the inland States to lands and natural resources below navigable waters within the boundaries of the inland States. Judge Manley O. Hudson, professor of international law at Harvard for the past 25 years and former member of the World Court at The Hague, testified:

Was the rule as to State ownership of the beds of navigable inland waters transplanted to the marginal sea? Or was not the rule as to ownership of the marginal sea transplanted to the navigable water of the bays and rivers? I think even a casual reading of the judicial pronouncements will show it was the latter. In the English case of the Royal Fishery of the River Banne, decided in 1610 (80 Eng. Rep. 540), it was said:

"The reason for which the King hath an interest in such navigable river, so high as the sea flows and ebbs in it, is, because such river participates of the nature of the sea, and is said to be a branch of the sea so far as it flows."

To give an American interpretation to the same effect, the Supreme Court said in *Barney* v. *Keokuk* (94 U. S. 324) that the principles applicable to tidewaters

"are equally applicable to all navigable waters." There is the progression. The original planting was in the marginal sea; the transplanting was in other navigable waters. Not from the inland waters to the marginal sea, but from the marginal sea and tidewaters to navigable waters inland.

The rationale of the so-called inland water rule was vigorously attacked by the Attorney General of the United States in the California case. Although he did not ask that it be overruled, he did state that "the tidelands and inland waters rule is believed to be erroneous." [12]

The Supreme Court has as much power to overrule its prior decisions laying down the inland-water rule as it had power to change its belief regarding ownership of the marginal belt within the boundaries of the States; and it may well do so in view of its holding in the California case, unless Congress acts to establish the law for the future. There was testimony expressing the view that the Federal Government now had the right to take oil, gas, oysters, and other resources from under navigable inland waters, without compensation.

V. What Disposition of the Submerged Lands Within State Boundaries Will Be in the Public Interest

Since Congress must restore to the States their long-asserted rights, or must implement the claims of the Federal Government in the submerged lands, we believe the following two propositions to be pertinent: (1) While limitations do not run and laches do not apply against a sovereign, a sovereign should be as eager to do equity as an individual; (2) the evidence conclusively shows that the national defense and the public interest will be served best by confirming the long-asserted rights of the States to the property in question.

WHAT ARE THE EQUITIES INVOLVED?

The Supreme Court stated in the California decision that the Court could not and did not—

assume that Congress, which has constitutional control over Government property, will execute its powers in such way as to bring about injustices to States, their subdivisions, or persons acting pursuant to their permission.

The President has stated there was no desire on the part of the administration—

to destroy or confiscate any honest or bona fide investment.

It is uncontraverted that improvements of the lands in question have been made at great expense to public and private agencies in the bona fide belief of the States' authority over them. Whether equity should be done necessarily raises the question of how these equities came into existence. The committee finds they exist because of the affirmative acts of ownership by the States carried on over a long period with the acquiescence and consent of the Federal Government.

Federal Government has traditionally obtained grants from the States

At the request of executive departments of the Federal Government, the States have deeded to the United States portions of their submerged lands lying outside the inland waters and within the 3-mile belt. (See Government's brief, p. 227 et seq. and appendix to California's brief, p. 169 et seq. in *U. S.* v. *California.*) In 14 separate

[12] Brief, United States, in *U. S.* v. *California*, p. 72.

instances, from 1889 to 1941, grants of such lands admittedly outside inland waters were made by the States of Washington, California, Texas, Florida, and South Carolina. In another 22 instances, from 1847 to 1943, grants were made by the States of Massachusetts, Rhode Island, and California involving lands which, according to the Government's brief referred to above, might be considered under either inland or marginal sea waters. Since 1790 an additional 159 grants of submerged lands have been made by practically every coastal State, but the Government claimed in its brief that they covered only inland waters.

These facts establish conclusively that the States, during more than a century, have been exercising the highest rights of ownership by conveying to the United States a part of the submerged lands within their boundaries.

Possession and use of submerged coastal lands by the States

The earliest assertions by the States of proprietary rights in their submerged lands arose in connection with regulation of fishing. Except in a few instances, where international treaties were involved, State control of fishing in navigable waters, within the State's boundaries, has been exclusive. The principal basis for this right to control fishing rests upon the proprietary rights of the State to the waters and the soil thereunder.[13] Proprietary rights further have been exercised by granting leases for harvesting kelp, removing sand, gravel, shells, sponges, etc. States and their grantees have expended millions of dollars to build piers, breakwaters, jetties, and other structures, to install sewage-disposal systems and to fill in beaches and reclaim lands. During the past two decades California, Louisiana, and Texas have been leasing substantial portions of the lands in question for oil, gas, and mineral development. California commenced such leasing in 1921 and Texas in 1926. Other States, including Washington, Florida, Mississippi, North Carolina, and Maryland, have made leases for like purposes. States have levied and collected taxes upon interests in and improvements on these lands. It appears to the committee that the States have exercised every sovereign right incident to the utilization of these submerged coastal lands.

Recognition of State ownership by Congress

In 1850 Congress approved the constitutional boundaries of California upon its admission to the Union. Its boundaries were specifically described as extending 3 miles into the Pacific Ocean. In 1859 Congress admitted Oregon into the Union with its constitutional boundaries specifically defined as being 1 marine league from its coast line. In 1868 Congress approved the Constitution of Florida, in which its boundaries were defined as extending 3 marine leagues seaward and a like distance into the Gulf of Mexico. Texas' boundary was fixed 3 marine leagues into the Gulf of Mexico at the time it was admitted to the Union in 1845 by the annexation agreement. In 1889 Congress approved the Constitution of the State of Washington, which defined its boundary as extending 1 marine league into the ocean and which specifically asserted its ownership to the beds of all navigable waters within the territorial jurisdiction of the State. In 1898, in extending the homestead laws to Alaska, Congress declared

[13] See *Smith* v. *Maryland* (18 How. 74), *McCready* v. *Virginia* (94 U. S. 394), *Manchester* v. *Mass.* (139 U. S. 234).

that nothing should impair the title of any State to be created out of the Alaskan Territory to the beds of its navigable waters which was defined as including tidal waters up to the line of ordinary high tide. It must be remembered that at the time of these actions by the Congress it was the universal belief that the States owned the beds of all navigable waters within their territorial jurisdiction, whether inland or not.

In 1938 and 1939 the Congress failed to enact legislation asserting ownership of submerged lands in the Federal Government, and in 1946 the Congress confirmed States' ownership of such lands by enactment of House Joint Resolution 225, which was vetoed by President Truman.

These affirmative acts by the Congress, and its failure to deny State ownership at any time in our history, establish conclusively that the congressional policy, at least since 1850, consistently has been to recognize State ownership of the lands in question.

Recognition of State ownership by the executive departments

Many attorneys general have approved, over a period of 100 years, as required by law, the title to the submerged coastal lands granted to the United States by the States. The War and Navy Departments have treated these lands as owned by the States since the Departments originated most of the requests for State grants of such lands to the United States. In some 30 opinions, from 1900 to 1937, the Department of the Interior ruled that ownership of the soil in the 3-mile belt was in the respective States. A quotation from one of these decisions rendered February 7, 1935, will illustrate the opinion of the Interior Department:

> It is not questioned that the land lies below the level of ordinary high tide of the Pacific Ocean. * * *
>
> "Upon the admission of California into the Union upon equal footing with the original States, absolute property in, and dominion and sovereignty over, all soils under the tidewaters within her limits passed to the State, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, * * *" (*Weber* v. *Harbor Commissioners*, 18 Wall. 57, 65).
>
> The Department, therefore, has no jurisdiction over the subject matter. This rule is regarded as decisive and binding on the Department. * * *

In its opinion in the California case, the Supreme Court agrees that the facts above discussed are—

> undoubtedly consistent with the belief on the part of some Government agents at the time that California owned all, or at least, a part of the 3-mile belt.

The facts are conclusive that at least prior to 1937 the policy of the executive departments of the Government has consistently been to recognize State ownership of the submerged lands, whether inland or not, within the territorial jurisdication of the State.

Recognition of State ownership by the judiciary

The evidence conclusively establishes that prior to the California decision the Supreme Court had in more than 30 cases, covering the period 1842 to 1935, announced the principle that the States owned the soils under all navigable waters within their territorial jurisdiction whether inland or not. A few examples of the language used in these decisions follow [emphasis supplied]:

> For when the Revolution took place the people of each State became themselves sovereign, and in that character hold the absolute right to *all their navigable waters*

and the soils under them * * * (*Martin* v. *Waddell*, 16 Peters 367, 410 (1842)).

All soils under the tidewaters within her limits passed to the State (*Weber* v. *Harbor Commissioners*, 18 Wallace 57, 66 (1873)).

It is the settled law of this country that the ownership of and dominion and sovereignty over lands covered by tidewaters, *within the limits of the several States*, belong to the respective States within which they are found, * * * (*Illinois Central R. R. Co.* v. *Illinois*, 146 U. S. 387 (1892)).

The soils under *tidewaters* within the original States were reserved to them respectively, and the States since admitted to the Union have the same sovereignty and jurisdiction to such lands *within their borders* as the original States possessed (*Borax Consolidated* v. *Los Angeles*, 296 U. S. 10, 15 (1935)).

The committee takes cognizance of the fact that the word "tidewaters" as applied to the facts in the cases cited above could not refer merely to the strip of land between high- and low-water mark. Indeed, it was held by the Supreme Court of the United States in *Manchester* v. *Mass.* (139 U. S. 258) that the term "tidewaters" includes the 3-mile belt.

The above citations are by no means isolated instances. Similar expressions have been used in Supreme Court opinions written by some of the most outstanding jurists in American history. Among them are Chief Justices Waite,[14] Fuller,[15] White,[16] Taft,[17] Stone,[18] and Justices Lamar,[19] Gray,[20] Holmes,[21] Brandeis,[22] and Cardozo.[23]

Hon. Manley O. Hudson, appearing at the request of Texas, after citing and quoting from a number of cases by the Supreme Court, commented on the expressions of the Court as follows:

> It is an imposing array of pronouncements—as imposing for their consistency as for the repetition. Mr. Justice Black says with becoming modesty that the Court "has used language strong enough to indicate that the Court then"—that is, over a period of a hundred years—"believed that States not only owned tidelands and soil under navigable inland waters, but also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not." He could have added that for generations lawyers, good lawyers, careful lawyers, all over the country believed the same thing, that they advised their clients that such was the law, and that acting on that advice their clients invested millions of their money and years of their energy in improvements and installations.

The evidence is conclusive that not only did our most eminent jurists so believe the law to be, but such was the belief of lower Federal court jurists and State supreme court jurists as reflected by more than 200 opinions. The pronouncements were accepted as the settled law by lawyers and authors of leading legal treatises.

The present Court in the California decision did not expressly overrule these prior Supreme Court opinions but, in effect, said that all the eminent authorities were in error in their belief.

For the first time in history the Court drew a distinction between the legal principles applicable to bays, harbors, sounds, and other inland waters on the one hand, and to submerged lands lying seaward of the low-water mark on the other, although it appears the Court had ample opportunity to do so in many previous cases, but failed or refused to draw such distinction. In the California decision the Court refused

[14] *McCready* v. *Virginia* (94 U. S. 391, 394 (1876)).
[15] *Louisiana* v. *Mississippi* (202 U. S. 1, 52 (1906)).
[16] Re *The Abby Dodge* (223 U. S. 166, 174 (1912)).
[17] *Appleby* v. *N. Y.* (271 U. S. 364, 381 (1926)).
[18] *U. S.* v. *Oregon* (295 U. S. 1, 14 (1935)).
[19] *Knight* v. *U. S. Land Ass'n.* (142 U. S. 161, 183 (1891)).
[20] *Shively* v. *Bowlby* (152 U. S. 1, 57 (1894)).
[21] *Hardin* v. *Shedd* (190 U. S. 508, 519 (1903)), *U. S.* v. *Chandler-Dunbar Water Power Co.* (209 U. S. 447, 451 (1908)).
[22] *Port of Seattle* v. *Oregon & W. RR. Co.* (255 U. S. 56, 63 (1921)).
[23] *New Jersey* v. *Delaware* (291 U. S. 361, 373 (1934)).

to apply what it termed "the old inland water rule" to the submerged coastal lands; however, historically speaking, it seems clear that the rule of State ownership of inland waters is, in fact, an offshoot of the marginal sea rule established much earlier.

Equity best served by establishing State ownership

The repeated assertions by our highest Court for a period of more than a century of the doctrine of State ownership of all navigable waters, whether inland or not, and the universal belief that such was the settled law, have for all practical purposes established a principle which the committee believes should as a matter of policy be recognized and confirmed by Congress as a rule of property law.

The evidence shows that the States have in good faith always treated these lands as their property in their sovereign capacities; that the States and their grantees have invested large sums of money in such lands; that the States have received, and anticipate receiving large income from the use thereof, and from taxes thereon; that the bonded indebtedness, school funds, and tax structures of several States are largely dependent upon State ownership of these lands; and that the legislative, executive, and judicial branches of the Federal Government have always considered and acted upon the belief that these lands were the properties of the sovereign States.

If these same facts were involved in a dispute between private individuals, an equitable title to the lands would result in favor of the person in possession. The Court in the California case states, as a matter of law, that the Federal Government—

> is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; * * *

The effect of this ruling of the Court is to place the State of California in the same legal position as an individual, thereby depriving it of its status as a sovereign. It should be noted that the case of *U. S.* v. *California* was a controversy between two sovereigns, namely, the United States on the one hand and the State of California on the other, both of which occupied equal dignity as sovereigns. The sovereign rights enjoyed by the United States were in the first instance derived from the States and the sovereign powers of the United States can rise no higher or have any greater effect than that which was delegated to the Central Government by the Constitution. The committee believes that, as a matter of policy in this instance, the same equitable principles and high standards that apply between individuals, should be applied by Congress as between the National Government and the sovereign States. (See *Indiana* v. *Kentucky*, 136 U. S. 479, 500 (1890); *U. S.* v. *Texas*, 162 U. S. 1, 61 (1896); *New Mexico* v. *Texas*, 275 U. S. 279 (1927).)

Therefore, the committee concludes that in order to avoid injustices to the sovereign States and their grantees, legislative equity can best be done by the enactment of S. 1988.

H. R. 5992 is not a gift to the States in any equitable sense

Attorney General Clark and Secretary Krug insisted that H. R. 5992 constituted a gift from the Federal Government to the several coastal States. Such objection, if it be one, must be predicated upon the assumption that H. R. 5992 will take from the United States Government some property right which it has heretofore enjoyed, and vest in the States rights and interests not hitherto enjoyed by the

States. Such is not the case. The Federal Government has never, prior to 1937, asserted any right in the submerged tidelands, has never enjoyed any rights, either in its sovereign or proprietary capacity over such lands, but at all times, from the inception of the Government and prior to 1937, acting through its executive agencies, recognized that unqualified ownership was in the coastal States and that such States had full and complete sovereignty and dominion over these lands, subject to the constitutional right of the Federal Government to regulate commerce. The committee cannot agree that the relinquishment by the Federal Government of something it never believed it had, and the confirmation of rights in the States which they always believed they did have and which they have always exercised, can be properly classified as a "gift," but rather a mere confirmation of titles asserted under what was long believed and accepted to be the law. On the basis of such believe and acceptance the States and their citizens have made large investments, in good faith, that would now be wiped out by the rule announced in the California case.

The Congress, in the exercise of its policy powers, is not and should not be confined to the same technical rules that bind the courts in their determination of legal rights of litigants. Too many people have acted over too long a period of time under a justifiable and reasonable belief for the Congress to refuse to vest in the States the submerged lands within their boundaries, merely because of the lack of a technical legal consideration moving from the States.

Inland States do not look upon H. R. 5992 as a gift

Representatives of the Federal Government have implied that the so-called "gift" will result to the detriment of inland States. If any great wrong were being done the inland States by H. R. 5992, the States being harmed would have protested its enactment. Not one State official appeared before the committee to oppose it. The governors, attorneys general, or other State officials of a total of 45 States have vigorously urged its enactment.

IT IS NOT IN THE PUBLIC INTEREST THAT ADMINISTRATION AND CONTROL OF SUBMERGED LANDS BE TRANSFERRED FROM THE STATES TO THE FEDERAL GOVERNMENT

This problem, as suggested by Mr. Justice Frankfurter, "involves many far-reaching, complicated, historic interests." Here we have the broad question whether Congress should confirm or whether it should reverse the traditional and long-accepted policy and practice that submerged lands within a State's boundary and all resources therein belong in a proprietary sense to the States, subject, of course, to all powers delegated to the United States by the Constitution. This far-reaching historic policy should be reversed only if the national interest demands such reversal. The committee is of the opinion that not only will the public interest be best served by confirming the rights of the States but that common justice and equity require such action.

The only reason advanced by the Federal officials who advocate the change is their desire for Federal management of the production of oil. It is noteworthy that the controversy had its inception in 1937 by reason of the Federal departments' attempt to secure con-

gressional sanction of their plans to assume control of the oil fields off the California coast. The subject matter of the litigation instituted by the Department of Justice and resulting in the decision in *United States* v. *California* was oil. The Departments of the Interior, Justice, and Defense base their objection to the continuance of State management of submerged lands on the sole ground that such lands contain valuable oil deposits. In their testimony the representatives of the Federal departments have admitted that they are not interested in anything but the oil. The Government's management bill deals only with oil. When asked why the Federal Government was not interested in other products, Attorney General Clark stated:

> Because we told the Court we were not. That is the policy of the Government.

The committee does not agree that the problem is limited to oil. The Court's opinion in the California case is not limited to oil. The paramount power under which the Federal Government now claims the right to take the oil without compensation extends to the 3-mile belt in all its aspects. The problem before Congress is as broad as the Court's decision, and the intentions of the Federal departments.

Public interest as to oil in submerged lands

The immediate needs of this country with regard to oil in the submerged lands are stated by Secretary of Defense Forrestal as follows:

> The maximum military requirements of petroleum in the event of a war emergency are now estimated nearly to double the requirements of World War II. * * * Regarding the quantity of reserves as a fund which supports a certain optimum withdrawal, it is clear that the National Military Establishment favors policies which will promote discoveries of new petroleum reserves. * * * The tidelands areas in particular are believed to hold great promise in adding oil to our available resources. It is the view of the National Military Establishment that development of the tidelands areas should proceed as rapidly as possible, and that all necessary action should be taken to permit rapid development of these areas. Delays in the development of the oil potentials in the tidelands is considered contrary to the best interest of the United States from the viewpoint of national security. * * * I do wish to emphasize that undeveloped oil fields provide no power for the machines of either war or peace.

The record shows that our highest civilian authorities and representatives of the oil industry are in complete agreement with Secretary Forrestal's statement.

The theory of establishing Government oil reserves by setting aside undeveloped areas has been discarded by practically all competent persons who have studied the matter.

The National Military Establishment is now in process of returning to the Interior Department for leasing to private interest, under existing laws, all naval reserve areas, except two, which are developed or in the process of development. It is the committee's opinion that the most effective petroleum reserve and the key to our national security is the development of an adequate reserve of productive capacity that can be drawn upon immediately in time of emergency. Although at the commencement of World War II we had such reserve, we do not now have the desired surplus productive capacity. To meet this essential and imperative need the tidelands should be developed as rapidly as possible. Thus, our principal consideration is whether that need will be best met under State or Federal control.

The evidence shows that intensive development of the submerged lands under State control is now under way, particularly in the Gulf of Mexico. Many geophysical crews have been and are now exploring

the area. Millions of acres of leases have been sold through competitive bidding off the coasts of Texas and Louisiana. Important test wells have been and are now being drilled. Plans have been made and the necessary preliminary work is under way for the drilling of more important test wells as the result of past geophysical work and leasings. Years have been spent by the States in working out legislation, rules, and regulations, and details of procedure and practices governing the geophysical work, leasing methods and drilling problems involved in this new and hazardous type of oil exploration. The States have established and maintain departments, technical staffs, and experienced personnel to handle these matters and supervise these activities. In other words, the States are "going concerns" in full and adequate operation.

Most of the oil-producing States are members of the interstate oil compact, which has been approved several times by Congress, and the purpose of which "is to conserve oil and gas by the prevention of physical waste thereof by any cause." The purposes for which the compact was created are being effectively and efficiently fulfilled.

If the submerged lands are transferred from State to Federal control, the Federal Government will have to begin from scratch. The ownership of the submerged lands off the coasts of Texas and Louisiana and other coastal States will have to be determined by litigation. At present there is not even a law under which the Federal Government could operate these lands. Even if such a law should be finally enacted, additional bureaus would have to be created and organized, new rules and regulations promulgated, new personnel obtained and trained, and new Federal leases acquired before any development could get under way.

The committee believes that failure to continue existing State control will result in delaying for an indefinite time the intensive development now under way on these lands and that any delay is, in the words of Secretary Forrestal, "contrary to the best interest of the United States from the viewpoint of national security."

The evidence does not show any reason why, from a policy standpoint, State control should not be continued. There is nothing in the record to justify a conclusion that State control is wasteful or improvident, or that under Federal control one more additional barrel of oil will be discovered or produced from these lands. None of the Federal Government's representatives had any criticisms to offer concerning either the management by the States of their submerged lands or the conservation regulations imposed upon the oil industry generally by the States.

When asked whether the Federal Government had any complaint as to the ability of the oil industry under the present policy of State control to comply with all Government needs in times of peace and war, Secretary Krug replied:

> They have done a miraculous job. I think they will continue to do a miraculous job, whether or not the United States gives up its ownership of these lands to the States.

No evidence was presented to show that the Federal Government could do a better job in administering the submerged lands than the States are doing. The evidence is overwhelming that State control is not only adequate but is desirable. Geological, engineering, and physical conditions in oil production vary greatly not only from State

to State, but also from field to field within a State. Different practices and procedures have been established to fit the peculiar local needs. Problems incident to the development of a new field and to the production of oil are complex and individualistic and, in many instances, demand a prompt solution so as to avoid waste. Local controls and promptness of action are highly desirable. The fixed, inflexible rules and the delays and remoteness which are inseparable from a centralized national control would, in the committee's judgment, be improvident.

The evidence is conclusive that private interests operating under State controls have been eminently more successful in developing our oil resources than under Federal controls. The State of New Mexico furnishes a good example. There are 11,500,000 acres of State-owned lands in New Mexico, while the Federal Government owns in excess of 34,000,000 acres. At the present time over 6,000,000 acres of State lands, or 52 percent, are under lease for oil and gas exploration, while only a little more than 2,000,000 acres of Federal lands, or about 6 percent, are under lease for oil and gas exploration.

In the five public land States producing oil and gas, the Federal Government owns approximately 36½ percent of the acreage but produces only about 13 percent of the oil and gas produced in these States. The 1946 total production from these lands was approximately 62,000,000 barrels, while the production from State and privately owned lands in the same States was in excess of 380,000,000 barrels. Thus, it will be seen that in these five "public land" States, where Federal- and State-owned lands are in direct competition with each other, development has been much faster and production has been much greater under State regulation than under Federal control. The total annual production of oil from the vast federally owned domain in 1946 was less than 12 days' production of the Nation. It must be conceded that the Federal Government has made a pitiful showing with respect to the development of public lands for oil and gas purposes.

The reasons for this situation are obvious. They may be listed as follows:

(1) The acreage limitations serve definitely to discourage exploration and production. It would be doubly true under the expensive and hazardous conditions of operations on the submerged lands.

(2) The Government reserves the right to change the royalty and otherwise change the terms of the lease. If changes are to be made after the risks have been taken and a discovery is made, the incentive to effort is materially reduced and the competitive urge to discover and produce new fields, and thus make oil available, is lessened.

(3) The basic difficulty in the Government's concept of leasing oil lands is that it reserves control of operations in Washington. That the Government may not exercise those controls is no argument; the control exists and, if experience may be relied upon, it is exercised. Certainly, the most oil will be produced for our national needs when the operator is left free to exercise his own judgment as an experienced and prudent person in determining how his property shall be developed and produced, subject always to the control of the States under its conservation laws, rules, and regulations.

Under the proposed Government bill, on advice from the Secretary of Defense and in the event of war, the Secretary of the Interior may

terminate the lease and pay the owner such consideration as he thinks is proper. This is an example of the Government's concept of proper controls.

(4) Government control is particularly unattractive to the smaller operators. It is a fact that 20 large companies actually own more than one-half of all the productive lease acreage on the public lands. The hazards and expense of operations in the submerged coastal lands are much greater than on the uplands. Government control would increase those hazards by imposing unnecessary and impractical restrictions and limitations. Such policy would particularly discourage individuals and small units in the industry and tend to delay immediate and early development of these lands so necessary for our national welfare.

Two other policy considerations lead the committee to believe that continued State control of these lands is desirable. One is that State control is more conducive to operations on submerged lands by the smaller independent producers. The evidence shows that Federal administration would have a strong tendency to eliminate the smaller producer from participation in development of the submerged lands. The second consideration is that Federal control of these vast deposits would be another step in the direction of nationalization of the natural resources of the Nation to which the committee is opposed.

In view of all these considerations, particularly the critical and imperative need in these uncertain times for the development of new oil resources with the greatest speed possible, the committee believes that it would not be in the public interest for this Congress to destroy the highly developed, experienced, and efficient State organizations now controlling the submerged oil deposits by transferring such resources to a Federal bureau which has no facilities, no intimate knowledge of the complex local problems, and no laws or established rules or practices under which operations can be carried on.

Public interest as to resources other than oil

The Court's decree in the California case covered not only the oil but the land, minerals, and "other things" underlying the ocean in the 3-mile belt.

The fishing industry is one of the major industries in our country and represents an important source of our food supply and of our national income. State control of fishing, especially for sedentary fish, such as shrimp, oysters, clams, crabs, lobsters, etc., has been based upon the State's ownership of the soil. Regulations by many States are based upon the statutory declaration of the State's ownership of the waters and the fish in them. In *Smith* v. *Maryland* (18 How. 74) the Court said:

> The State holds the *propriety* of this soil for the conservation of the public rights of fishing thereon, and may regulate the modes of that enjoyment so as to prevent the destruction of the fishery. * * * *This power results from the ownership of the soil,* from the legislative jurisdiction of the State over it, and from its duty to preserve those public uses *for which the soil is held.* [Italics supplied.]

Kelp is a very important product in California's 3-mile belt. It grows from the bed of the sea and is, like grain, harvested with a reaper. It is a potential source of potash salts and iodine. In the year 1945, 37,542 tons of kelp were harvested under State leases. In 1911 the Department of Agriculture said:

The giant kelp beds of the Pacific coast are * * * a national asset of first importance. (See S. Doc. 190, 62d Cong., 2d sess.)

In many of the coastal States there are other important industries that take resources from the soil of the 3-mile belt, such as sponges, sand, gravel, shell, etc.

No witness contended that the California decision is not broad enough to permit Federal regulation of these resources. No evidence was submitted to show that the public interest would be better served by transferring the management of these resources to the Federal Government and thereby destroy the existing controls that have been long established by the States.

Representatives of the Federal departments in effect admitted the efficacy of continued State management by their statements that they were not interested in the fish, shrimp, oysters, kelp, and other products of the marginal sea. No explanation has been given for this discriminatory policy whereby the oil lessees are to be subject to Federal control, while other lessees of submerged lands remain under State control.

Under the holding in the California case, the administrative officers now in office can no more legally waive the rights of the Federal Government to these other resources by saying they are not interested in them, than could their predecessors in office legally waive the Federal Government's paramount rights over the oil by ruling the submerged lands belonged to the States.

Only the Congress can assure the States, and the widespread and important industries affected, that they will not be subject to Federal control but will remain under State control. The committee believes that they are entitled to such assurance from the Congress.

Other public interests in submerged lands

Apart from the resources which may be taken from submerged lands, the States have other interests in the use of such lands. Many piers, docks, wharves, jetties, sea walls, groins, pipe lines, sewage-disposal systems, acres of reclaimed land and filled-in beaches, etc., have been established and many more will be established on these lands. The recreational use of the submerged areas along the Atlantic, Pacific, and Gulf coasts has become of great importance. The uses to which these lands are put are essentially local in character, and are of primary concern to the people of the particular locality. Any conflict of interests arising from the use of the submerged lands should be and can best be solved by local authorities.

Even if the departments' proposed S. 2222 is enacted, confusion and delay in programs for the future development of these lands (for example, the $100,000,000 program in the city of Los Angeles) are inevitable, inasmuch as all development after June 23, 1947, would be subject to Federal authority. First, the demarcation line between the so-called inland waters and the submerged coastal area must be drawn in order to determine jurisdiction. Secondly, a complete new Federal procedure duplicating State procedure must be established. Then the portion of the improvement situated on lands between high- and low-water mark will be under State jurisdiction, while the portion situated on lands seaward from low-water mark will be under Federal jurisdiction. The confusion and practical difficulties seem obvious and interminable.

No witness contended that the Federal Government had any need to own or control the submerged lands for these purposes. The committee believes that the States have such need, and is of the opinion that these interests are so intimately connected with local activities that it constitutes another paramount reason why the control of these submerged lands should not be taken from the local authorities and transferred to a centralized Federal authority.

VI. Objections to H. R. 5992 by Federal Mineral Applicants

Objections to H. R. 5992 were interposed by a few individuals and their lawyers, who have applied to the Department of the Interior, under the Mineral Leasing Act, for oil leases on submerged areas adjacent to the California coast. Their objections stem from their applications for Federal leases, and are based on their contention that the Federal Government is the owner of the submerged areas and should issue to them, without payment of any bonus, oil leases on such areas, some of which include completely developed oil fields valued at millions of dollars. Whether the Government is required to issue the leases is a legal question now involved in a suit brought by some of the applicants against the Secretary of the Interior, and, of course, cannot be determined by the committee. We do not think, however, the dispute is material to the policy question which the Congress must decide, namely, whether the Congress should ratify and confirm in the States their claims to the soil and resources under navigable waters within their boundaries.

VII. Synopsis of H. R. 5992

(*a*) It confirms, establishes, and vests in the States or persons lawfully entitled thereto under State law all right, title, and interest of the United States, if any it has, in and to the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and the right and power to control, develop, and use such natural resources, subject to the reservation of all Federal powers under the Constitution.

(*b*) It releases any claims that it may have arising out of the previous operations conducted on the submerged lands or in the waters covering them under State authority.

(*c*) It gives the United States a preferential right in time of war, or at any other time, when necessary for national defense, to purchase any of the natural resources produced from the lands included in the bill.

(*d*) The bill protects the jurisdiction and authority of the United States Government and all of its agencies, such as the Federal Power Commission, and all departments of the Government, such as the Army, Navy, Interior, and Commerce, to exercise constitutional powers to control and improve navigable waters in aid of navigation and commerce, or to regulate navigable waters for flood control, and to use such waters for the development of hydroelectric power and for all other purposes necessary to regulate commerce. It protects the jurisdiction of the Federal Government and all rights exercised under the reclamation laws by an express provision that the act may not be construed to repeal, amend, or modify any of the reclamation acts or

amendments thereto. It protects and confirms the rights of those holdings under Federal authority with respect to the beds of streams now or hereafter constituting a part of the public lands of the United States not meandered in connection with the public survey of such lands under the laws of the United States. By the express provisions of the bill, all rights and claims of the United States to the Continental Shelf lying outside the boundaries of the States are preserved.

(*e*) Finally, it is the intent and purpose of this bill to establish the law for the future so that the rights and powers of the States and those holding under State authority may be preserved as they existed prior to the decision of the Supreme Court of the United States in the California case.

APPENDIXES

APPENDIX A

List of those appearing and those submitting statements during joint hearings on S. 1988, H. R. 5992, and related measures, excepting Members of Congress

IN SUPPORT OF PROPOSED LEGISLATION

Conference of Governors, by the unanimous vote of 44 governors.
Governors of Alabama, Arkansas, California, Connecticut, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.
National Association of Attorneys General.
Attorneys general of Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, West Virginia, and Wisconsin.
Attorney-general-elect of Virginia.
National Association of Secretaries of State.
National Association of State Land Officials.
Council of State Governments.
Interstate Oil Compact Commission.
State Lands Commission of California.
California Fish and Game Commission.
California State Park Commission.
Joint Interim Committee of California State Legislature.
Illinois Post War Planning Commission.
State Mineral Board of Louisiana.
Register of State Land Office of Louisiana.
State treasurer of Michigan.
Department of Conservation of Michigan.
State auditor of Oklahoma.
State Superintendent of Public Instruction of Oklahoma.
Commission of Land Office of Oklahoma.
Texas School Land Board.
Commission of General Land Office, State of Texas.
State Board of Education of Texas.
Board of Public Works of West Virginia.
Public Lands Corporation of West Virginia.
District attorney of Plaquemines Parish, La.
Texas County Judges and Commissioners Association.
Public Utilities Commission, City and County of San Francisco, Calif.
National Institute of Municipal Law Officers.
United States Conference of Mayors.
Mayors of New York, N. Y.; Los Angeles, Calif.; Milwaukee, Wis.
Corporation Counsel for Boston, Mass.
City attorneys for Los Angeles, Calif.; Milwaukee, Wis.; Long Beach, Calif.
City manager of Monterey, Calif.
Councils of cities of Los Angeles and Long Beach, Calif.
American Association of Port Authorities.
Great Lakes Harbor Association.
Pacific Coast Association of Port Authorities.
Port of New York Authority.
Harbor Commission of City of San Diego, Calif.

Board of Harbor Commissioners, Milwaukee, Wis.
American Bar Association.
State Bar Association of California.
Oklahoma Bar Association.
State Bar Association of Texas.
United States Chamber of Commerce.
Idaho State Chamber of Commerce.
East Texas Chamber of Commerce.
West Texas Chamber of Commerce.
South Texas Chamber of Commerce.
Baltimore Chamber of Commerce.
San Francisco Chamber of Commerce.
Chambers of Commerce of Crescent City and of Eureka, Calif.
Texas School Teachers' Association.
Texas Parent-Teachers Association.
Texas Editorial Association.
Texas Department of American Legion.
West Texas Press Association.
American Title Association.
National Reclamation Association.
National Water Conservation Conference.
Texas Water Conservation Association.
Independent Petroleum Producers Association.
Southern States Industrial Council.
United States Wholesale Grocers Association, Inc.
Judge Manley O. Hudson.
Hon. Harold E. Stassen.
Brooklyn Eastern District Terminal.
Havemeyers & Elder, Inc.
Land Title, Guarantee & Trust Co., Cleveland, Ohio.
Lawrence Wards Island Realty Co.
Messrs. Kenneth C. Barranger, Walter S. Hallanan, Ray P. Hanscom, Robert E. Hardwicke, Carl Illig, Eugene Kelly, R. F. Lewis, C. Perry Patterson, Olin S. Procter, H. C. Sevier, Oscar W. Worthwine.
State Legislatures of Massachusetts, Virginia, Mississippi, and California.
State Legislatures of New York, South Carolina, and Louisiana and Florida State Senate (in support of H. J. Res. 225).

IN OPPOSITION TO PROPOSED LEGISLATION

Attorney General of the United States.
Secretary of Interior.
Secretary of National Defense.
Legislative counsel of the National Grange.
Hon. Harold L. Ickes.
Hon. B. K. Wheeler.
Peoples Lobby, Inc.
Washington correspondent, St. Louis Post-Dispatch.
Messrs. T. S. Hogan, J. W. Sharts, O. D. Walker, and C. M. Wright.

APPENDIX B

Approximate areas of submerged lands within State boundaries

[Expressed in square miles]

State	Inland waters [1]	Great Lakes [2]	Marginal sea [2]	State	Inland waters [1]	Great Lakes [2]	Marginal sea [2]
Alabama	531	----------	159	New Hampshire	280	----------	14
Arizona	329	----------	----------	New Jersey	314	----------	390
Arkansas	377	----------	----------	New Mexico	155	----------	----------
California	1,890	----------	3,970	New York	1,647	3,627	381
Colorado	280	----------	----------	North Carolina	3,570	----------	903
Connecticut	110	----------	600	North Dakota	611	----------	----------
Delaware	79	----------	84	Ohio	100	3,457	----------
Florida	4,298	----------	7,340	Oklahoma	636	----------	----------
Georgia	358	----------	300	Oregon	631	----------	888
Idaho	749	----------	----------	Pennsylvania	288	735	----------
Illinois	453	1,526	----------	Rhode Island	156	----------	120
Indiana	86	228	----------	South Carolina	461	----------	561
Iowa	294	----------	----------	South Dakota	511	----------	----------
Kansas	163	----------	----------	Tennessee	285	----------	----------
Kentucky	286	----------	----------	Texas	3,695	----------	3,854
Louisiana	3,346	----------	4,169	Utah	2,570	----------	----------
Maine	2,175	----------	1,187	Vermont	331	----------	----------
Maryland	690	----------	93	Virginia	916	----------	336
Massachusetts	350	----------	576	Washington	1,215	----------	470
Michigan	1,194	38,459	----------	West Virginia	91	----------	----------
Minnesota	4,059	2,212	----------	Wisconsin	1,439	10,062	----------
Mississippi	296	----------	213	Wyoming	408	----------	----------
Missouri	404	----------	----------				
Montana	822	----------	----------	Total	45,251	60,306	26,608
Nebraska	584	----------	----------				
Nevada	738	----------	----------				

[1] Areas of the United States, 1940, Sixteenth Census of the United States (Government Printing Office, 1942), pp. 2, et seq. These figures are very approximate but are absolute minimums, since they do not include some 74,364 square miles of lands under water, which consists of deeply indented embayments and sounds, and other waters lying between the outer limits set for inland water and behind or sheltered by headlands or islands separated by less than 10 nautical miles of water (ibid).

[2] World Almanac and Book of Facts for 1947, published by the New York World Telegram (1947), p. 138; Serial No. 22, Department of Commerce, U. S. Coast and Geodetic Survey, November 1915, In figuring marginal sea area, only original State boundaries have been used. These coincide with the 3-mile limit for all States except Texas, Louisiana, and the Florida Gulf coast. In the latter cases the 3-league limit as established before or at the time of entry into the Union has been used.

MINORITY VIEWS

(To accompany H. R. 5992)

The undersigned members of the Committee on the Judiciary are strongly opposed to the enactment of H. R. 5992.

The proponents of this measure have asserted that its purpose is to remove an uncertainty in respect to the rights and ownership of the various States in and to the lands and resources underlying navigable waters within their boundaries alleged to have been created by the decision rendered by the Supreme Court on June 23, 1947, in the case of *United States* v. *California* (332 U. S. 19). It is asserted further by its proponents that the bill would do nothing more than confirm in the respective States that which has always been regarded as the property of the States. My personal investigation of this matter has convinced me that the enactment of the measure would accomplish an entirely different result.

The language of H. R. 5992 purports to embrace all lands underlying navigable waters within the boundaries of the respective States, extending seaward to a line three geographical miles distant from the coast line of each State or to the seaward boundary of each such State where such boundary is situated more than three geographical miles from shore. As a practical matter, however, the measure would be applicable only to the lands under a portion of such waters. The United States has not and does not assert any right, title, or interest in lands underlying bays, harbors, rivers, or other navigable inland waters of any of the States. Consequently, the only lands upon which this measure would operate are those situated under the open ocean, seaward of low-water mark along the open coast and outside of the inland waters of the respective coastal States.

The language of the bill would appear to be that of a quitclaim, but its enactment would result in more than a mere quitclaim of the rights and interests of the United States in lands and resources underlying the open ocean. In *United States* v. *California* the Supreme Court held that the State of California is not and never has been the owner of the 3-mile marginal belt of the Pacific Ocean adjacent to its coast and that the United States, rather than the State, has paramount rights in, and dominion and power over, that 3-mile belt, an incident to which is the right to control the appropriation and disposition of the mineral resources of the subsoil. Since these rights and interests are vested in the United States, and the State has no property interest of any sort in lands underlying the ocean, the enactment of the measure would operate (in respect to California, at least, and presumably in respect to all other coastal States) as an outright gift or donation of the rights and interests held by the United States in lands underlying the open ocean, and the recipients of this donation would not be all of the States of the Union but merely those States which are situated along the open coast. I am not aware of any consideration of

law or policy which would warrant such a disposition of valuable assets which are held by the United States for the benefit of all the people of all the States.

Aside from the above-mentioned basic objections to H. R. 5992, it may be mentioned that its enactment might create certain problems of an international nature. The bill would purport to recognize the claims of ownership asserted by the various coastal States to lands underlying all navigable waters within their boundaries, whatever the extent of those boundaries may be. In the case of Louisiana, for instance, the seaward boundary of the State has been declared to be a line 27 marine miles from shore; in the case of Texas, the boundary has been declared to be the edge of the Continental Shelf in the Gulf of Mexico, approximately 60 miles from shore. The United States has not, through its political branches, extended the seaward boundary of this country beyond the recognized 3-mile limit. The enactment of H. R. 5992 might result in a congressional recognition of a greater limit opposite the shores of certain States. There would seem to be grave doubt as to the wisdom of such action in the absence of careful study and consideration by those officials of this country charged with the conduct of international relations.

The proponents of H. R. 5992 have suggested that the decision of the Supreme Court in *United States* v. *California* actually invites the enactment of legislation of this type by the Congress. Even a casual reading of the opinion of the Supreme Court will reveal that such an inference is not justified. The only legislative action contemplated by the Court in its opinion was that referred to by counsel for the Government during oral argument of the case for the solution of the problem arising in connection with such equities as might exist as a result of improvements previously erected in the area held to be that of the United States under a mistaken assumption as to the ownership of the underlying land. Such legislation has been drafted and offered to the committee as a substitute for H. R. 5992. Included in this substitute measure are provisions which would confirm in the respective States of the Union their claims of ownership to all lands underlying inland navigable waters. These provisions have been included as additional assurance that the United States, as repeatedly declared by its public officials, does not claim any lands underlying inland waters. It is the strong belief of the undersigned that the Congress should adopt the substitute measure referred to and not the bill reported by the Committee on the Judiciary.

CONCLUSION

But, above all, this consideration must be conclusive against this bill: If it became law it would rob the National Government of its constitutional right and duty to defend itself and every one of its constituent States. Oil is essential to the maintenance and use of both the Army and the Navy. No atomic bomb can be dropped without carrying it to its objective by airplane, which cannot run without oil. Of course, the ships of the fleet and their auxiliary craft are all driven by oil; so are tanks, jeeps, and all the many miscellaneous craft of land, sea, and air, operated by the Army and Navy.

So we must preserve the paramount right now adjudged by the decision in the California case to be vested in the National Government, to take and use the petroleum deposits in the bed of the sea within its territorial waters, seaward of low-water mark, for its sovereign powers.

This bill controverts and virtually seeks to repeal the decision in the California case. It denies the right of the National Government to take and use any of the elements necessary for national defense in the bed of the ocean without paying the littoral States therefor, in accordance with the law of eminent domain. But eminent domain has never been held to apply to any issue arising out of the bed of the ocean. To the contrary, the Supreme Court has held in a long line of decisions that where the right existed the National Government could exercise that right without any compensation. The California case holds clearly that the National Government has the paramount right to the subocean oil off the coast of California and that California does not own that oil nor have any right thereto.

Thus the issue is clear. If we vote for this bill we vote to cripple national defense—and at such a time!

SAM HOBBS.
EMANUEL CELLER.

APPENDIX II

By reason of the fact that quotations have been made in the report from the opinions of the Supreme Court in the cases of the *United States of America, plaintiff*, v. *State of California*, the *United States of America, plaintiff*, v. *State of Louisiana*, and the *United States of America, plaintiff*, v. *State of Texas*, it is deemed advisable that the full text of the opinions of June 23, 1947, and of June 5, 1950, including the dissenting opinions, be herein printed for the purpose of ready reference. The opinions referred to read as follows:

[Supreme Court of the United States. No. 12, original—October term 1946. *United States of America, plaintiff*, v. *State of California*. Original]

[June 23, 1947]

Mr. JUSTICE BLACK delivered the opinion of the Court.

The United States by its Attorney General and Solicitor General brought this suit against the State of California invoking our original jurisdiction under article III, section 2, of the Constitution which provides that "In all cases * * * in which a State shall be a party, the Supreme Court shall have original jurisdiction." The complaint alleges that the United States "is the owner in fee simple of, or possessed of paramount rights in and powers over, the lands, minerals, and other things of value underlying the Pacific Ocean, lying seaward of the ordinary low watermark on the coast of California and outside of the inland waters of the State, extending seaward three nautical miles and bounded on the north and south, respectively, by the northern and southern boundaries of the State of California." It is further alleged that California, acting pursuant to State statutes, but without authority from the United States, has negotiated and executed numerous leases with persons and corporations purporting to authorize them to enter upon the described ocean area to take petroleum, gas, and other mineral deposits, and that the lessees have done so, paying to California large sums of money in rents and royalties for the petroleum products taken. The prayer is for a decree declaring the rights of the United States in the area as against California and enjoining California and all persons claiming under it from continuing to trespass upon the area in violation of the rights of the United States.

California has filed an answer to the complaint. It admits that persons holding leases from California, or those claiming under it, have been extracting petroleum products from the land under the 3-mile ocean belt immediately adjacent to California. The basis of California's asserted ownership is that a belt extending three English miles from low-water mark lies within the original boundaries of the State (Cal. Const. Art. XII (1849));[1] that the Original Thirteen States acquired from the Crown of England title to all lands within their boundaries under navigable waters, including a 3-mile belt in adjacent seas; and that since California was admitted as a State on an "equal footing" with the Original States, California became vested with title to all such lands. The answer further sets up several "affirmative" defenses. Among these are that California should be adjudged to have title under a doctrine of prescription; because of an alleged long existing congressional policy of acquiescence in California's asserted ownerships; because of estoppel or laches; and finally by application of the rule of res judicata.[2]

[1] The Government complaint claims an area extending 3 nautical miles from shore; the California boundary purports to extend 3 English miles. One nautical mile equals 1.15 English miles, so that there is a difference of 0.45 of an English mile between the boundary of the area claimed by the Government, and the boundary of California. See Cal. Const. Art. XXI, Sec. 1 (1879).

[2] The claim of res judicata rests on the following contention: The United States sued in ejectment for certain lands situated in San Francisco Bay. The defendant held the lands under a grant from California. This Court decided that the State grant was valid because the land under the Bay had passed to the State upon its admission to the Union. *United States* v. *Mission Rock Co.* (189 U. S. 391). There may be other reasons why the judgment in that case does not bar this litigation; but it is a sufficient reason that this case involves land under the open sea, and not land under the inland waters of San Francisco Bay.

After California's answer was filed, the United States moved for judgment as prayed for in the complaint on the ground that the purported defenses were not sufficient in law. The legal issues thus raised have been exhaustively presented by counsel for the parties, both by brief and oral argument. Neither has suggested any necessity for the introduction of evidence, and we perceive no such necessity at this stage of the case. It is now ripe for determination of the basic legal issues presented by the motion. But before reaching the merits of these issues, we must first consider questions raised in California's brief and oral argument concerning the Government's right to an adjudication of its claim in this proceeding.

First. It is contended that the pleadings present no case or controversy under article III, section 2, of the Constitution. The contention rests in the first place on an argument that there is no case or controversy in a legal sense, but only a difference of opinion between Federal and State officials. It is true that there is a difference of opinion between Federal and State officers. But there is far more than that. The point of difference is as to who owns, or has paramount rights in and power over several thousand square miles of land under the ocean off the coast of California. The difference involves the conflicting claims of Federal and State officials as to which Government, State or Federal, has a superior right to take or authorize the taking of the vast quantities of oil and gas underneath that land, much of which has already been, and more of which is about to be, taken by or under authority of the State. Such concrete conflicts as these constitute a controversy in the classic legal sense, and are the very kind of differences which can only be settled by agreement, arbitration, force, or judicial action. The case principally relied upon by California, *United States* v. *West Virginia* (295 U. S. 463), does not support its contention. For here there is a claim by the United States, admitted by California, that California has invaded the title or paramount right asserted by the United States to a large area of land and that California has converted to its own use oil which was extracted from that land. *Cf. United States* v. *West Virginia*, *supra*, 471. This alone would sufficiently establish the kind of concrete, actual conflict of which we have jurisdiction under article III. The justiciability of this controversy rests therefore on conflicting claims of alleged invasions of interests in property and on conflicting claims of governmental powers to authorize its use. *United States* v. *Texas* (143 U. S. 621, 646, 648); *United States* v. *Minnesota* (270 U. S. 181, 194); *Nebraska* v. *Wyoming* (325 U. S. 589, 608).

Nor can we sustain that phase of the State's contention as to the absence of a case or controversy resting on the argument that it is impossible to identify the subject matter of the suit so as to render a proper decree. The land claimed by the Government, it is said, has not been sufficiently described in the complaint since the only shoreward boundary of some segments of the marginal belt is the line between that belt and the State's inland waters. And the Government includes in the term "inland waters" port, harbors, bays, rivers, and lakes. Pointing out the numerous difficulties in fixing the point where these inland waters end and the marginal sea begins, the State argues that the pleadings are therefore wholly devoid of a basis for a definite decree, the kind of decree essential to disposition of a case like this. Therefore, California concludes, all that is prayed for is an abstract declaration of rights concerning an unidentified 3-mile belt, which could only be used as a basis for subsequent actions in which specific relief could be granted as to particular localities.

We may assume that location of the exact coastal line will involve many complexities and difficulties. But that does not make this any the less a justiciable controversy. Certainly demarcation of the boundary is not an impossibility. Despite difficulties, this Court has previously adjudicated controversies concerning submerged land boundaries. (See *New Jersey* v. *Delaware*, 291 U. S. 361, 295 U. S. 694; *Borax Ltd.* v. *Los Angeles*, 296 U. S. 10, 21–27; *Oklahoma* v. *Texas*, 256 U. S. 70, 602.) And there is no reason why, after determining in general who owns the 3-mile belt here involved, the Court might not later, if necessary, have more detailed hearings in order to determine with greater definiteness particular segments of the boundary (*Oklahoma* v. *Texas*, 258 U. S. 574, 582). Such practice is commonplace in actions similar to this which are in the nature of equitable proceedings. (See, e. g., *Oklahoma* v. *Texas*, 256 U. S. 608–609; 260 U. S. 606, 625; 261 U. S. 340.) California's contention concerning the indefiniteness of the claim presents no insuperable obstacle to the exercise of the highly important jurisdiction conferred on us by article III of the Constitution.

Second. It is contended that we should dismiss this action on the ground that the Attorney General has not been granted power either to file or to maintain

it. It is not denied that Congress has given a very broad authority to the Attorney General to institute and conduct litigation in order to establish and safeguard Government rights and properties.[3] The argument is that Congress has for a long period of years acted in such a way as to manifest a clear policy to the effect that the States, not the Federal Government, have legal title to the land under the 3-mile belt. Although Congress has not expressly declared such a policy, we are asked to imply it from certain conduct of Congress and other governmental agencies charged with responsibilities concerning the national domain. And, in effect, we are urged to infer that Congress has by implication amended its long-existing statutes which grant the Attorney General broad powers to institute and maintain court proceedings in order to safeguard national interest.

An act passed by Congress and signed by the President could, of course, limit the power previously granted the Attorney General to prosecute claims for the Government. For article IV, section 3, clause 2, of the Constitution, vests in Congress "power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." We have said that the constitutional power of Congress in this respect is without limitation (*United States* v. *San Francisco*, 310 U. S. 16, 29–30). Thus neither the courts nor the executive agencies could proceed contrary to the act of Congress in this congressional area of national power.

But no act of Congress has amended the statutes which impose on the Attorney General the authority and the duty to protect the Government's interests through the courts. (See *In re Cooper*, 143 U. S. 472, 502–503.) That Congress twice failed to grant the Attorney General specific authority to file suit against California,[4] is not a sufficient basis upon which to rest a restriction of the Attorney General's statutory authority. And no more can we reach such a conclusion because both Houses of Congress passed a joint resolution quitclaiming to the adjacent States a 3-mile belt of all land situated under the ocean beyond the low-water mark, except those which the Government had previously acquired by purchase, condemnation, or donation.[5] This joint resolution was vetoed by the President.[6] His veto was sustained.[7] Plainly, the resolution does not represent an exercise of the constitutional power of Congress to dispose of public property under article IV, section 3, clause 2.

Neither the matters to which we have specifically referred, nor any others relied on by California, afford support for a holding that Congress has either explicitly or by implication stripped the Attorney General of his statutorily granted power to invoke our jurisdiction in this Federal-State controversy. This brings us to the merits of the case.

Third. The crucial question on the merits is not merely who owns the bare legal title to the lands under the marginal sea. The United States here asserts rights in two capacities transcending those of a mere property owner. In one capacity it asserts the right and responsibility to exercise whatever power and dominion are necessary to protect this country against dangers to the security and tranquillity of its people incident to the fact that the United States is located immediately adjacent to the ocean. The Government also appears in its capacity as a member of the family of nations. In that capacity it is responsible for conducting United States relations with other nations. It assets that proper exercise of these constitutional responsibilities requires that it have power, unencumbered by State commitments, always to determine what agreements will be made concerning the control and use of the marginal sea and the land under it. (See *McCulloch* v. *Maryland* (4 Wheat. 316, 403–408); *United States* v. *Minnesota* (270 U. S. 181, 194).) In the light of the foregoing, our question is whether the State or the Federal Government has the paramount right and power to determine in the first instance when, how, and by what agencies, foreign or domestic,

[3] 5 U. S. C., secs. 291, 309; *United States* v. *San Jacinto Tin Co.* (125 U. S. 273, 279, 284); *Kern River Co.* v. *United States* (257 U. S. 147, 154–55); *Sanitary District* v. *United States* (266 U. S. 405, 425–426); see also *In re Debs* (158 U. S. 564, 584); *United States* v. *Oregon* (295 U. S. 1, 24); *United States* v. *Wyoming* (323 U. S. 669, 331 U. S.).

[4] S. J. Res. 208, 75th Cong., 1st sess. (1938); S. J. Res. 83 and 92, 76th Cong., 1st sess. (1939). S. J. Res. 208 passed the Senate, 81 Congressional Record 9326 (1938), was favorably reported by the House Judiciary Committee, H. Rept. 2378, 75th Cong., 3d sess. (1938), but was never acted on in the House. Hearings were held on S. J. Res. 83 and 92 before the Senate Committee on Public Lands and Surveys, but no further action was taken. Hearings before the Senate Committee on Public Lands and Surveys on S. J. Res. 83 and 92, 76th Cong., 1st sess. (1939). In both hearings objections to the resolutions were repeatedly made on the ground that passage of the resolutions was unnecessary since the Attorney General already had statutory authority to institute the proceedings. See hearings before the House Committee on the Judiciary on S. J. Res. 208, 75th Cong., 3d sess., 42–45, 59–61 (1938); hearings on S. J. Res. 83 and 92, supra, 27–30.

[5] H. J. Res. 225, 79th Cong., 2d sess. (146); 92 Congressional Record 9642, 10316 (1946).

[6] 92 Congressional Record 10660 (1946).

[7] 92 Congressional Record 10745 (1946).

the oil and other resources of the soil of the marginal sea, known or hereafter discovered, may be exploited.

California claims that it owns the resources of the soil under the 3 mile marginal belt as an incident to those elements of sovereignty which it exercises in that water area. The State points out that its original constitution, adopted in 1849 before that State was admitted to the Union, included within the State's boundary the water area extending 3 English miles from the shore. (Cal. Const. (1849) art. XII, sec. 1; that the enabling act which admitted California to the Union ratified the territorial boundary thus defined; and that California was admitted "on an equal footing with the original States in all respects whatever," 9 Stat. 452.) With these premises admitted, California contends that its ownership follows from the rule originally announced in *Pollard's Lessee* v. *Hagan* (3 How. 212); see also *Martin* v. *Waddell* (16 Pet. 367, 410). In the Pollard case it was held, in effect, that the original States owned in trust for their people the navigable tidewaters between high- and low-water marks within each State's boundaries, and the soil under them, as an inseparable attribute of State sovereignty. Consequently, it was decided that Alabama, because admitted into the Union on "an equal footing" with the other States, had thereby become the owner of the tidelands within its boundaries. Thus the title of Alabama's tidelands grantee was sustained as valid against that of a claimant holding under a United States grant made subsequent to Alabama's admission as a State.

The Government does not deny that under the Pollard rule, as explained in later cases,[8] California has a qualified ownership [9] of lands under inland navigable waters such as rivers, harbors, and even tidelands down to the low-water mark. It does question the validity of the rationale in the Pollard case that ownership of such water areas, any more than ownership of uplands, is a necessary incident of the State sovereignty contemplated by the "equal footing" clause. Cf. *United States* v. *Oregon* (295 U. S. 1, 14). For this reason, among others, it argues that the Pollard rule should not be extended so as to apply to lands under the ocean. It stresses that the Thirteen Original Colonies did not own the marginal belt; that the Federal Government did not seriously assert its increasing greater rights in this area until after the formation of the Union; that it has not bestowed any of these rights upon the States but has retained them as appurtenances of national sovereignty. And the Government insists that no previous case in this Court has involved or decided conflicting claims of a State and the Federal Government to the 3-mile belt in a way which requires our extension of the Pollard inland water rule to the ocean area.

It would unduly prolong our opinion to discuss in detail the multitude of references to which the able briefs of the parties have cited us with reference to the evolution of powers over marginal seas exercised by adjacent countries. From all the wealth of material supplied, however, we cannot say that the Thirteen Original Colonies separately acquired ownership to the 3-mile belt or the soil under it,[10] even if they did acquire elements of the sovereignty of the English Crown by their revolution against it. (Cf. *United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304, 316.)

At the time this country won its independence from England there was no settled international custom or understanding among nations that each nation owned a 3-mile water belt along its borders. Some countries, notably England, Spain, and Portugal, had, from time to time, made sweeping claims to a right of dominion over wide expanses of ocean, and controversies had arisen among nations about rights to fish in prescribed areas.[11] But when this Nation was formed the idea of a 3-mile belt over which a littoral nation could exercise rights

[8] See e. g., *Manchester* v. *Massachusetts* (139 U. S. 240); *Louisiana* v. *Mississippi* (202 U. S. 1); *The Abby Dodge* (223 U. S. 166). See also *United States* v. *Mission Rock Co.* (189 U. S. 391); *Borax, Ltd.* v. *Los Angeles* (296 U. S. 10).

Although the Pollard case has thus been generally approved many times, the case of *Shively* v. *Bowlby* (152 U. S. 1, 47–48, 58), held, contrary to implications of the Pollard opinion, that the United States could lawfully dispose of tidelands while holding a future State's land "in trust" as a territory.

[9] See *United States* v. *Commodore Park* (324 U. S. 386, 389, 391); *Scranton* v. *Wheeler* (179 U. S. 141, 159, 160, 163); *Stockton* v. *Baltimore & N. Y. R. Co.* (32 F. 9, 20); see also *United States* v. *Chandler-Dunbar Co.* (229 U. S. 53).

[10] A representative collection of official documents and scholarship on the subject is Crocker, The Extent of the Marginal Sea (1919). See also I Azuni, Maritime Law of Europe (published 1806), ch. II; Fulton, Sovereignty of the Sea (1911); Masterson, Jurisdiction in Marginal Seas (1929); Jessup, The Law of Territorial Waters and Maritime Jurisdiction (1927); Fraser, The Extent and Delimitation of Territorial Waters, 11 Corn. L. Q. 455 (1926); Ireland, Marginal Seas Around the States, 2 La. L. Rev. 252, 436 (1940); Comment, Conflicting State and Federal Claims of Title in Submerged Lands of the Continental Shelf, 56 Yale L. J. 356 (1947).

[11] E. g., Fulton, op. cit., supra, 3–19, 144–145; Jessup, op. cit., supra, 4.

of ownership was but a nebulous suggestion.[12] Neither the English charters granted to this Nation's settlers,[13] nor the treaty of peace with England,[14] nor any other document to which we have been referred, showed a purpose to set apart a 3-mile ocean belt for colonial or State ownership.[15] Those who settled this country were interested in lands upon which to live and waters upon which to fish and sail. There is no substantial support in history for the idea that they wanted or claimed a right to block off the ocean's bottom for private ownership and use in the extraction of its wealth.

It did happen that shortly after we became a Nation our statesmen became interested in establishing a national dominion over a definite marginal zone to protect our neutrality.[16] Largely as a result of their efforts the idea of a definite 3-mile belt in which an adjacent nation can, if it chooses, exercise broad, if not complete, dominion, has apparently at last been generally accepted throughout the world,[17] although as late as 1876 there was still considerable doubt in England about its scope and even its existence. (See *The Queen* v. *Keyn*, L. R. 2 Exch. Div. 63.) That the political agencies of this Nation both claim and exercise broad dominion and control over our 3-mile marginal belt is now a settled fact (*Cunard Steamship Co.* v. *Mellon*, 262 U. S. 100, 122–124 [18]). And this assertion of national dominion over the 3-mile belt is binding upon this Court. (See *Jones* v. *United States*, 137 U. S. 202, 212–214; *In re Cooper*, 143 U. S. 472, 502–503.)

Not only has acquisition, as it were, of the 3-mile belt been accomplished by the National Government but protection and control of it has been, and is, a function of national external sovereignty. (See *Jones* v. *United States*, 137 U. S. 202; *In re Cooper*, 143 U. S. 472, 502.) The belief that local interests are so predominant as constitutionally to require State dominion over lands under its landlocked navigable waters finds some argument for its support. But such can hardly be said in favor of State control over any part of the ocean or the ocean's bottom. This country, throughout its existence, has stood for freedom of the seas—a principle whose breach has precipitated wars among nations. The country's adoption of the 3-mile belt is by no means incompatible with its traditional insistence upon freedom of the seas—at least so long as the National Government's power to exercise control consistently with whatever international undertakings or commitments it may see fit to assume in the national interest is unencumbered. (See *Hines* v. *Davidowitz*, 312 U. S. 52, 62–64; *McCulloch* v. *Maryland*, *supra*.) The 3-mile rule is but a recognition of the necessity that a government next to the sea must be able to protect itself from dangers incident to its location. It must have powers of dominion and regulation in the interest of its revenues, its health, and the security of its people from wars raged on or too near its coasts, and insofar as the Nation asserts its rights under international law, whatever of value may be discovered in the seas next to its shores

[12] Fulton, op. cit., supra, 21, says in fact that "mainly through the action and practice of the United States of America and Great Britain since the end of the eighteenth century, the distance of 3 miles from shore was more or less formally adopted by most maritime states as * * * more definitely fixing the limits of their jurisdiction and rights for various purposes, and, in particular, for exclusive fishery."

[13] Collected in Thorpe, American Charters, Constitutions, and Organic Laws (1919).

[14] Treaty of 1783, 8 Stat. 80.

[15] The Continental Congress did, for example, authorize capture of neutral and even American ships carrying British goods, "if found within 3 leagues (about 9 miles) of the coasts." Journ. of Cong. 185, 186, 187 (1781). Cf. Declaration of Panama of 1939; 1 Dept. of State Bull. 321 (1939), claiming the right of the American Republics to be free from a hostile act in a zone 300 miles from the American coasts.

[16] Secretary of State Jefferson, in a note to the British Minister in 1793, pointed to the nebulous character of a nation's assertions of territorial rights in the marginal belt and put forward the first official American claim for a 3-mile zone which has since won general international acceptance. Reprinted in H. Ex. Doc. No. 324, 42d Cong., 2d sess. (1872), 553–554. See also Secretary Jefferson's note to the French Minister, Genet, reprinted American State Papers, I Foreign Relations (1833), 183, 384; act of June 5, 1794, 1 Stat. 381; 1 Kent, Commentaries, fourteenth ed., 33–40.

[17] See Jessup, op. cit., supra, 66; Research in International Law, 23 A. J. I. L. 249, 250 (Spec. Supp. 1929).

[18] See also *Church* v. *Hubbart* (2 Cranch 187, 234). Congressional assertion of a territorial zone in the sea appears in statutes regulating seals, fishing, pollution of waters, etc., 36 Stat. 325, 328: 43 Stat. 604, 605; 37 Stat. 499, 501. Under the National Prohibition Act territory including "a marginal belt of the sea extending from low-water mark outward a marine league, or three geographical miles" constituting "the territorial waters of the United States" was regulated (41 Stat. 305). Reprinted in Research in International Law, supra, 250. Antismuggling treaties in which foreign nations agreed to permit the United States to pursue smugglers beyond the 3-mile limit contained express stipulations that generally the 3-mile limit constitutes "the proper limits of territorial waters." See, e. g., 43 Stat. 1761 (pt. 2).

There are innumerable executive declarations to the world of our national claims to the 3-mile belt, and more recently to the whole Continental Shelf. For references to diplomatic correspondence making these assertions, see 1 Moore, International Law Digest (1906), 705, 706, 707; 1 Wharton, Digest of International Law (1886), 100. See also Hughes, Recent Questions and Negotiations, 18 A. J. I. L. 229 (1924).

The latest and broadest claim is President Truman's recent proclamation that the United States "regards the natural resources of the subsoil and sea bed of the Continental Shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control * * *" Exec. Proc. 2667, Sept. 28, 1945, 10 F. R. 12303.

and within its protective belt will most naturally be appropriated for its use. But whatever any nation does in the open sea, which detracts from its common usefulness to nations, or which another nation may charge detracts from it,[19] is a question for consideration among nations as such and not their separate governmental units. What this Government does, or even what the States do, anywhere in the ocean, is a subject upon which the Nation may enter into and assume treaty or similar international obligations. (See *United States* v. *Belmont*, 201 U. S. 324, 331–332). The very oil about which the State and Nation here contend might well become the subject of international dispute and settlement.

The ocean, even its 3-mile belt, is thus of vital consequence to the Nation in its desire to engage in commerce and to live in peace with the world; it also becomes of crucial importance should it ever again become impossible to preserve that peace. And as peace and world commerce are the paramount responsibilities of that Nation, rather than an individual State, so, if wars come, they must be fought by the Nation. (See *Chy Lung* v. *Freeman*, 92 U. S. 275, 279.) The State is not equipped in our constitutional system with the powers or the facilities for exercising the responsibilities which would be concomitant with the dominion which it seeks. Conceding that the State has been authorized to exercise local police power functions in the part of the marginal belt within its declared boundaries,[20] these do not detract from the Federal Government's paramount rights in, and power over, this area. Consequently, we are not persuaded to transplant the Pollard rule of ownership as an incident of State sovereignty in relation to inland waters out into the soil beneath the ocean, so much more a matter of national concern. If this rationale of the Pollard case is a valid basis for a conclusion that paramount rights run to the States in inland waters to the shoreward of the low-water mark, the same rationale leads to the conclusion that national interests, responsibilities, and therefore national rights are paramount in waters lying to the seaward in the 3-mile belt. (Cf. *United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304, 316; *United States* v. *Causby*, 328 U. S. 256.)

As previously stated, this Court has followed and reasserted the basic doctrine of the Pollard case many times. And in doing so it has used language strong enough to indicate that the Court then believed that States not only owned tidelands and soil under navigable inland waters but also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not. All of these statements were, however, merely paraphrases or offshoots of the Pollard inland-water rule and were used, not as enunciation of a new ocean rule but in explanation of the old inland-water principle. Notwithstanding the fact that none of these cases either involved or decided the State-Federal conflict presented here, we are urged to say that the language used and repeated in those cases forecloses the Government from the right to have this Court decide that question now that it is squarely presented for the first time.

There are three such cases whose language probably lend more weight to California's argument than any others. The first is *Manchester* v. *Massachusetts* (139 U. S. 240). That case involved only the power of Massachusetts to regulate fishing. Moreover, the illegal fishing charged was in Buzzards Bay, found to be within Massachusetts territory, and no question whatever was raised or decided as to title or paramount rights in the open sea. And the Court specifically laid to one side any question as to the rights of the Federal Government to regulate fishing there. The second case, *Louisiana* v. *Mississippi* (202 U. S. 1, 52), uses language about "the sway of the riparian States" over "maritime belts." That was a case involving the boundary between Louisiana and Mississippi. It did not involve any dispute between the Federal and State Governments. And the Court there specifically laid aside questions concerning the "breadth of the maritime belt or the extent of the sway of the riparian States * * *" (id. at 52). The third case is *The Abby Dodge* (223 U. S. 166). That was an action against a ship landing sponges at a Florida port in violation of an act of Congress (34 Stat. 313), which made it unlawful to "land" sponges taken under certain conditions from the waters of the Gulf of Mexico. This Court construed the statute's prohibition as applying only to sponges outside the State's "territorial limits" in the Gulf. It thus narrowed the scope of the statute because of a belief that the United States was without power to regulate the Florida traffic in sponges obtained from within Florida's territorial limits, presumably the 3-mile belt.

[19] See *Lord* v. *Steamship Co.*, 102 U. S. 541, 544.

[20] See *Utah Power & Light Co.* v. *United States*, 243 U. S. 389, 404; Cf. *The Abby Dodge*, 223 U. S. 166 with *Skiriotes* v. *Florida*, 313 U. S. 69, 74–75.

But the opinion in that case was concerned with the State's power to regulate and conserve within its territorial waters, not with its exercise of the right to use and deplete resources which might be of national and international importance. And there was no argument there, nor did this Court decide, whether the Federal Government owned or had paramount rights in the soil under the Gulf waters. That this question remained undecided is evidenced by *Skiriotes* v. *Florida* (313 U. S. 69, 75), where we had occasion to speak of Florida's power over sponge fishing in its territorial waters. Through Mr. Chief Justice Hughes we said: "It is also clear that Florida has an interest in the proper maintenance of the sponge fishery and that the (State) statute *so far as applied to conduct within the territorial waters of Florida, in the absence of conflicting Federal legislation, is within the police power of the State.*" [Emphasis supplied.]

None of the foregoing cases, nor others which we have decided, are sufficient to require us to extend the Pollard inland water rule so as to declare that California owns or has paramount rights in, or power over, the 3-mile belt under the ocean. The question of who owned the bed of the sea only became of great potential importance at the beginning of this century, when oil was discovered there.[21] As a consequence of this discovery, California passed an act in 1921 authorizing the granting of permits to California residents to prospect for oil and gas on blocks of land off its coast under the ocean (Cal. Stats. 1921, c. 303). This State statute, and others which followed it, together with the leasing practices under them, have precipitated this extremely important controversy and pointedly raised this State-Federal conflict for the first time. Now that the question is here, we decide, for the reasons we have stated, that California is not the owner of the 3-mile marginal belt along its coast and that the Federal Government rather than the State has paramount rights in and power over that belt, an incident to which is full dominion over the resources of the soil under that water area, including oil.

Fourth. Nor can we agree with California that the Federal Government's paramount rights have been lost by reason of the conduct of its agents. The State sets up such a defense, arguing that by this conduct the Government is barred from enforcing its rights by reason of principles similar to laches, estoppel, adverse possession. It would serve no useful purpose to recite the incidents in detail upon which the State relies for these defenses. Some of them are undoubtedly consistent with a belief on the part of some Government agents at the time that California owned all, or at least a part of the 3-mile belt. This belief was indicated in the substantial number of instances in which the Government acquired title from the States to lands located in the belt; some decisions of the Department of the Interior have denied applications for Federal oil and gas leases in the California coastal belt on the ground that California owned the lands. Outside of court decisions following the Pollard rule, the foregoing are the types of conduct most nearly indicative of waiver upon which the State relies to show that the Government has lost its paramount rights in the belt. Assuming that Government agents could by conduct, short of a congressional surrender of title or interest, preclude the Government from asserting its legal rights, we cannot say it has done so here. As a matter of fact, the record plainly demonstrates that until the California oil issue began to be pressed in the thirties, neither the States nor the Government had reason to focus attention on the question of which of them owned or had paramount rights in or power over the 3-mile belt. And even assuming that Government agencies have been negligent in failing to recognize or assert the claims of the Government at an earlier date, the great interests of the Government in this ocean area are not to be forfeited as a result. The Government, which holds its interests here as elsewhere in trust for all the people, is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; and officers who have no authority at all to dispose of Government property cannot by their conduct cause the Government to lose its valuable rights by their acquiescence, laches, or failure to act.[22]

We have not overlooked California's argument, buttressed by earnest briefs on behalf of other States, that improvements have been made along and near the shores at great expense to public and private agencies. And we note the Government's suggestion that the aggregate value of all these improvements are small in comparison with the tremendous value of the entire 3-mile belt here in contro-

[21] Bull. No. 321, Department of the Interior, Geological Survey.

[22] *United States* v. *San Francisco* (310 U. S. 16, 31-32); *Utah* v. *United States* (284 U. S. 534, 545, 546); *Lee Wilson & Co.* v. *United States* (245 U. S. 24, 32); *Utah Power & Light Co.* v. *United States* (243 U. S. 389, 409). See also *Secy. of State for India* v. *Chelikani Rama Rao* (L. R., 43 Indian App. 192, 204 (1916)).

versy. But however this may be, we are faced with the issue as to whether State or Nation has paramount rights in and power over this ocean belt, and that great national question is not dependent upon what expenses may have been incurred upon mistaken assumptions. Furthermore, we cannot know how many of these improvements are within and how many without the boundary of the marginal sea which can later be accurately defined. But beyond all this we cannot and do not assume that Congress, which has constitutional control over Government property, will execute its powers in such way as to bring about injustices to States, their subdivisions, or persons acting pursuant to their permission. See *United States* v. *Texas* (162 U. S. 1, 89, 90); *Lee Wilson & Co.* v. *United States* (245 U. S. 24, 32).

We hold that the United States is entitled to the relief prayed for. The parties, or either of them, may, before September 15, 1947, submit the form of decree to carry this opinion into effect, failing which the Court will prepare and enter an appropriate decree at the next term of court.

It is so ordered.

Mr. JUSTICE JACKSON took no part in the consideration or decision of this case.

Mr. JUSTICE REED, dissenting.

In my view the controversy brought before this Court by the complaint of the United States against California seeks a judgment between State and Nation as to the ownership of the land underlying the Pacific Ocean, seaward of the ordinary low-water mark, on the coast of California and within the 3-mile limit. The ownership of that land carries with it, it seems to me, the ownership of any minerals or other valuables in the soil, as well as the right to extract them.

The determination as to the ownership of the land in controversy turns for me on the fact as to ownership in the Original Thirteen States of similar lands prior to the formation of the Union. If the original States owned the bed of the sea, adjacent to their coasts, to the 3-mile limit, then I think California has the same title or ownership to the lands adjacent to her coast. The original States were sovereignties in their own right, possessed of so much of the land underneath the adjacent seas as was generally recognized to be under their jurisdiction. The scope of their jurisdiction and the boundaries of their lands were coterminous. Any part of that territory which had not passed from their ownership by existing valid grants were and remained public lands of the respective States. California, as is customary, was admitted into the Union "on an equal footing with the original States in all respects whatever" (9 Stat. 452). By section 3 of the act of admission, the public lands within its borders were reserved for disposition by the United States. "Public lands" was there used in its usual sense of lands, subject to sale under general laws. As was the rule, title to lands under navigable waters vested in California as it had done in all other States (*Pollard* v. *Hagan*, 3 How. 212; *Barney* v. *Keokuk*, 94 U. S. 324, 338; *Shively* v. *Bowlby*, 152 U. S. 1, 49; *Mann* v. *Tacoma Land Co.*, 153 U. S. 273, 284; *Borax Consolidated, Ltd.* v. *Los Angeles*, 296 U. S. 10, 17).

The authorities cited in the Court's opinion lead me to the conclusion that the original States owned the lands under the seas to the 3-mile limit. There were, of course, as is shown by the citations, variations in the claims of sovereignty, jurisdiction, or ownership among the nations of the world. As early as 1793, Jefferson as Secretary of State in a communication to the British Minister said that the territorial protection of the United States would be extended "three geographical miles" and added:

"This distance can admit of no opposition, as it is recognized by treaties between some of the powers with whom we are connected in commerce and navigation, and is as little, or less, than is claimed by any of them on their own coasts" (H. Ex. Doc. No. 324, 42d Cong., 2d sess., pp. 553–554).

If the original States did claim, as I think they did, sovereignty and ownership to the 3-mile limit, California has the same rights in the lands bordering its littoral.

This ownership in California would not interfere in any way with the needs or rights of the United States in war or peace. The power of the United States is plenary over these undersea lands precisely as it is over every river, farm, mine, and factory of the Nation. While no square ruling of this Court has determined the ownership of those marginal lands, to me the tone of the decisions dealing with similar problems indicates that, without discussion, State ownership has been assumed (*Pollard* v. *Hagan*, supra; *Louisiana* v. *Mississippi*, 202 U. S. 1, 52; *The Abby Dodge*, 223 U. S. 166; *New Jersey* v. *Delaware*, 291 U. S. 361; 295 U. S. 694).

Mr. JUSTICE FRANKFURTER, dissenting.

By this original bill, the United States prayed for a decree enjoining all persons, including those asserting a claim derived from the State of California from trespassing upon the disputed area. An injunction against trespassers normally presupposes property rights. The Court, however, grants the prayer but does not do so by finding that the United States has proprietary interests in the area. To be sure it denies such proprietary rights in California. But even if we assume an absence of ownership or possessory interest on the part of California, that does not establish a proprietary interest in the United States. It is significant that the Court does not adopt the Government's elaborate argument, based on dubious and tenuous writings of publicists, that this part of the open sea belongs, in a proprietary sense, to the United States. See Schwarzenberger, Inductive Approach to Internal Law, 60 Harv. L. Rev. 539, 559. Instead, the Court finds trespass against the United States on the basis of what it calls the "national dominion" by the United States over this area.

To speak of "dominion" carries precisely those overtones in the law which relate to property and not to political authority. "Dominion," from the Roman concept "dominium," was concerned with property and ownership, as against "imperium," which related to political sovereignty. One may choose to say, for example, that the United States has "national dominion" over navigable streams. But the power to regulate commerce over these streams, and its continued exercise, do not change the imperium of the United States into dominium over the land below the waters. Of course, the United States has "paramount rights" in the sea belt of California—the rights that are implied by the power to regulate interstate and foreign commerce, the power of condemnation, the treaty-making power, the war power. We have not now before us the validity of the exercise of any of these paramount rights. Rights of ownership are here asserted—and rights of ownership are something else. Ownership implies acquisition in the various ways in which land is acquired—by conquest, by discovery and claim, by cession, by prescription, by purchase, by condemnation. When and how did the United States acquire this land?

The fact that these oil deposits in the open sea may be vital to the national security, and important elements in the conduct of our foreign affairs, is no more relevant than is the existence of uranium deposits, wherever they may be in determining questions of trespass to the land of which they form a part. This is not a situation where an exercise of national power is actively and presently interfered with. In such a case, the inherent power of a Federal court of equity may be invoked to prevent or remove the obstruction (*in re Debs* (158 U. S. 564); *Sanitary District* v. *United States* (266 U. S. 405)). Neither the bill, nor the opinion sustaining it, suggests that there is interference by California or the alleged trespassers with any authority which the Government presently seeks to exercise. It is beside the point to say that "if wars come, they must be fought by the Nation." Nor is it relevant that "the very oil about which the State and Nation here contend might well become the subject of international dispute and settlement." It is common knowledge that uranium has become "the subject of international dispute" with a view to settlement. Compare *Missouri* v. *Holland* (252 U. S. 416).

To declare that the Government has "national dominion" is merely a way of saying that vis-à-vis all other nations the Government is the sovereign. If that is what the Court's decree means, it needs no pronouncement by this Court to confer or declare such sovereignty. If it means more than that, it implies that the Government has some proprietary interest. That has not been remotely established except by sliding from absence of ownership by California to ownership by the United States.

Let us assume, for the present, that ownership by California cannot be proven. On a fair analysis of all the evidence bearing on ownership, then, this area is, I believe, to be deemed unclaimed land, and the determination to claim it on the part of the United States is a political decision not for this Court. The Constitution places vast authority for the conduct of foreign relations in the independent hands of the President. See *United States* v. *Curtiss-Wright Corp.* (299 U. S. 304). It is noteworthy that the Court does not treat the President's proclamation in regard to the disputed area as an assertion of ownership. If California is found to have no title, and this area is regarded as unclaimed land, I have no doubt that the President and the Congress between them could make it part of the national domain and thereby bring it under article IV, section 3, of the Constitution. The disposition of the area, the rights to be created in it, the rights heretofore claimed in it through usage that might be respected though it fall short of prescription, all raise appropriate questions of policy, questions of

accommodation, for the determination of which Congress and not this Court is the appropriate agency.

Today this Court has decided that a new application even in the old field of torts should not be made by adjudication where Congress has refrained from acting (*United States* v. *Standard Oil Co.* (330 U. S. —)). Considerations of judicial self-restraint would seem to me far more compelling where there are obviously at stake claims that involve so many far-reaching, complicated, historic interests, the proper adjustments of which are not readily resolved by the materials and methods to which this Court is confined.

This is a summary statement of views which it would serve no purpose to elaborate. I think that the bill should be dismissed without prejudice.

SUPREME COURT OF THE UNITED STATES

No. 12, Original—October Term, 1949

The United States of America, Plaintiff, v. *The State of Louisiana*

MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

(June 5, 1950)

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The United States by its Attorney General and its Solicitor General brought this suit against the State of Louisiana, invoking our jurisdiction under Art. III, § 2, Cl. 2 of the Constitution which provides "In all Cases . . . in which a State shall be a Party, the Supreme Court shall have original Jurisdiction."

The complaint alleges that the United States was and is

> "the owner in fee simple of, or possessed of paramount rights in, and full dominion and power over, the lands, minerals, and other things underlying the Gulf of Mexico, lying seaward of the ordinary low-water mark on the coast of Louisiana and outside of the inland waters, extending seaward twenty-seven marine miles and bounded on the east and west, respectively, by the eastern and western boundaries of the State of Louisiana."

The complaint further alleges that Louisiana, claiming rights in that property adverse to the United States, has made leases under her statutes to various persons and corporations which have entered upon said lands, drilled wells for the recovery of petroleum, gas, and other hydrocarbon substances, and paid Louisiana substantial sums of money in bonuses, rent, and royalties, but that neither Louisiana nor its lessees have recognized the rights of the United States in said property.

The prayer of the complaint is for a decree adjudging and declaring the right of the United States as against Louisiana in this property, enjoining Louisiana and all persons claiming under it from continuing to trespass upon the area in violation of the right of the United States, and requiring Louisiana to account for the money derived by it from the area subsequent to June 23, 1947.

Louisiana opposed the motion for leave to file the complaint, contending that the States have not consented to be sued by the Federal Government and that *United States* v. *Texas*, 143 U. S. 621, which held that Art. III, § 2, Cl. 2 of the Constitution, granting this Court original jurisdiction in cases "in which a State shall be a Party," includes cases brought by the United States against a State should be overruled. We heard argument on the motion for leave to file and thereafter granted it. 337 U. S. 902, rehearing denied, 337 U. S. 928.

Louisiana then filed a demurrer asserting that the Court has no original jurisdiction of the parties or of the subject matter. She moved to dismiss on the ground that the lessees are indispensable parties to the case; and she also moved for a more definite statement of the claim of the United States and for a bill of particulars. The United States moved for judgment. The demurrer was overruled, Louisiana's motions denied, and the motion of the United States for judgment was denied, Louisiana being given 30 days in which to file an answer. 338 U. S. 806.

In her answer Louisiana admits that "the United States has paramount rights in, and full dominion and power over, the lands, minerals, and other things underlying the Gulf of Mexico adjacent to the coast of Louisiana, to the extent of all governmental powers existing under the Constitution, laws, and treaties of the United States," but asserts that there are no conflicting claims of governmental powers to authorize the use of the bed of the Gulf of Mexico for the purpose of

searching for and producing oil and other natural resources, on which the relief sought by the United States depends, since the Congress has not adopted any law which asserts such federal authority over the bed of the Gulf of Mexico. Louisiana therefore contends that there is no actual justiciable controversy between the parties. Louisiana in her answer denies that the United States has a fee simple title to the lands, minerals, and other things underlying the Gulf of Mexico. As affirmative defenses Louisiana asserts that she is the holder of fee simple title to all the lands, minerals, and other things in controversy; and that since she was admitted into the Union in 1812, she has exercised continuous, undisturbed and unchallenged sovereignty and possession over the property in question.

Louisiana also moved for trial by jury. She asserts that this suit, involving title to the beds of tide waters, is essentially an action at law and that the Seventh Amendment and 28 U. S. C. § 1872, 62 Stat. 953, require a jury.[1]

The United States then moved for judgment on the ground that Louisiana's asserted defenses were insufficient in law. We set the case down for argument on that motion.

The territory out of which Louisiana was created was purchased by the United States from France for $15,000,000 under the Treaty of April 30, 1803, 8 Stat. 200. In 1804 the area thus acquired was divided into two territories, one being designated as the Territory of Orleans, 2 Stat. 283. By the Enabling Act of February 20, 1811, 2 Stat. 641, the inhabitants of the Territory of Orleans were authorized to form a constitution and a state government. By the Act of April 8, 1812, 2 Stat. 701, 703, Louisiana was admitted to the Union "on an equal footing with the original states, in all respects whatever." And as respects the southern boundary, that Act recited that Louisiana was "bounded by the said gulf [of Mexico] * * * including all islands within three leagues of the coast."[2] In 1938 Louisiana by statute declared its southern boundary to be twenty-seven marine miles from the shore line.[3]

We think *United States* v. *California*, 332 U. S. 19, controls this case and that there must be a decree for the complainant.

We lay aside such cases as *Toomer* v. *Witsell*, 334 U. S. 385, 393, where a State's regulation of coastal waters below the low-water mark collides with the interests of a person not acting on behalf of or under the authority of the United States. The question here is not the power of a State to use the marginal sea or to regulate its use in absence of a conflicting federal policy; it is the power of a State to deny the paramount authority which the United States seeks to assert over the area in question. We also put to one side *New Orleans* v. *United States*, 10 Pet. 662, holding that title to or dominion over certain lots and vacant land along the river in the city of New Orleans did not pass to the United States under the treaty of cession but remained in the city. Such cases, like those involving ownership of the land under the inland waters (see, for example, *Pollard's Lessee* v. *Hagan*, 3 How. 212), are irrelevant here. As we pointed out in *United States* v. *California*, the issue in this class of litigation does not turn on title or ownership in the conventional sense. California, like the thirteen original colonies, never acquired ownership in the marginal sea. The claim to our three-mile belt was first asserted by the national government. Protection and control of the area are indeed functions of national external sovereignty. 332 U. S. pp. 31–34. The marginal sea is a national, not a state concern. National interests, national responsibilities, national concerns are involved. The problems of commerce, national defense, relations with other powers, war and peace focus there. National rights must therefore be paramount in that area.

That is the rationale of *United States* v. *California*. It is fully elaborated in the opinion of the Court in that case and does not need repetition.

We have carefully considered the extended and able argument of Louisiana in all its aspects and have found no reason why Louisiana stands on a better footing than California so far as the three-mile belt is concerned. The national interest in that belt is as great off the shore line of Louisiana as it is off the shore line of California. And there are no material differences in the preadmission or post-admission history of Louisiana that make her case stronger than California's.

[1] The Seventh Amendment provides: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."

28 U. S. C. § 1872 provides: "In all original actions at law in the Supreme Court against citizens of the United States, issues of fact shall be tried by a jury."

[2] And see Dart, Louisiana Constitutions (1932) p. 499.

[3] 6 Dart, La. Gen. Stats. (1939) §§ 9311.1–9311.4.

Louisiana prior to admission had no stronger claim to ownership of the marginal sea than the original thirteen colonies or California had. Moreover, the national dominion in the three-mile belt has not been sacrificed or ceded away in either case. The United States, acting through its Attorney General who has authority to assert claims of this character and to invoke our jurisdiction in a federal-state controversy (*United States* v. *California*, pp. 26–29) now claims its paramount rights in this domain.

There is one difference, however, between Louisiana's claim and California's. The latter claimed rights in the three-mile belt. Louisiana claims rights twenty-four miles seaward of the three-mile belt. We need note only briefly this difference. We intimate no opinion on the power of a State to extend, define, or establish its external territorial limits or on the consequences of any such extension *vis a vis* persons other than the United States or those acting on behalf of or pursuant to its authority The matter of state boundaries has no bearing on the present problem. If, as we held in California's case, the three-mile belt is in the domain of the nation rather than that of the separate States it follows *a fortiori* that the ocean beyond that limit also is. The ocean seaward of the marginal belt is perhaps even more directly related to the national defense, the conduct of foreign affairs, and world commerce than is the marginal sea. Certainly it is not less so. So far as the issues presented here are concerned, Louisiana's enlargement of her boundary emphasizes the strength of the claim of the United States to this part of the ocean and the resources of the soil under that area including oil.

Louisiana's motion for a jury trial is denied. We need not examine it beyond noting that this is an equity action for an injunction and accounting. The Seventh Amendment and the statute,[4] assuming they extend to cases under our original jurisdiction, are applicable only to actions at law. See *Shields* v. *Thomas*, 18 How. 253, 262; *Barton* v. *Barbour*, 104 U. S. 126, 133–134.

We hold that the United States is entitled to the relief prayed for. The parties, or either of them, may before September 15, 1950, submit the form of decree to carry this opinion into effect.

So ordered.

MR. JUSTICE JACKSON and MR. JUSTICE CLARK took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 12, Original—October Term, 1949

The United States of America, Plaintiff, v. *the State of Louisiana*

MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

(June 5, 1950)

MR. JUSTICE FRANKFURTER.

Time has not made the reasoning of *United States* v. *California*, 332 U. S. 19, more persuasive but the issue there decided is no longer open for me. It is relevant, however, to note that in rejecting California's claim of ownership in the off-shore oil the Court carefully abstained from recognizing such claim of ownership by the United States. This was emphasized when the Court struck out the proprietary claim of the United States from the terms of the decree proposed by the United States in the *California* case.*

I must leave it to those who deem the reasoning of that decision right to define its scope and apply it, particularly to the historically very different situation of Texas. As is made clear in the opinion of MR. JUSTICE REED, the submerged lands now in controversy were part of the domain of Texas when she was on her own. The Court now decides that when Texas entered the Union she lost what she had and the United States acquired it. How that shift came to pass remains for me a puzzle.

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[4] See note 1, *supra*.

*The decree proposed by the United States read in part:

"1. The United States of America is now, and has been at all times pertinent hereto, possessed of paramount rights *of proprietorship* in, and full dominion and power over, the lands, minerals, and other things underlying the Pacific Ocean * * *"

The italicized words were omitted in the Court's decree. 332 U. S. 804, 805.

SUPREME COURT OF THE UNITED STATES

No. 13, Original—October Term, 1949

The United States of America, Plaintiff, v. *The State of Texas*

MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

(June 5, 1950)

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This suit, like its companion *United States* v. *Louisiana, ante,* decided this day, invokes our original jurisdiction under Art. III, § 2, Cl. 2 of the Constitution and puts into issue the conflicting claims of the parties to oil and other products under the bed of the ocean below low-water mark off the shores of Texas.

The complaint alleges that the United States was and is

> "the owner in fee simple of, or possessed of paramount rights in, and full dominion and power over, the lands, minerals and other things underlying the Gulf of Mexico, lying seaward of the ordinary low-water mark on the coast of Texas and outside of the inland waters, extending seaward to the outer edge of the continental shelf and bounded on the east and southwest, respectively, by the eastern boundary of the State of Texas and the boundary between the United States and Mexico."

The complaint is in other material respects identical with that filed against Louisiana. The prayer is for a decree adjudging and declaring the rights of the United States as against Texas in the above-described area, enjoining Texas and all persons claiming under it from continuing to trespass upon the area in violation of the rights of the United States, and requiring Texas to account to the United States for all money derived by it from the area subsequent to June 23, 1947.

Texas opposed the motion for leave to file the complaint on the grounds that the Attorney General was not authorized to bring the suit and that the suit, if brought, should be instituted in a District Court. And Texas, like Louisiana, moved to dismiss on the ground that since Texas had not consented to be sued, the Court had no original jurisdiction of the suit. After argument we granted the motion for leave to file the complaint. 337 U. S. 902. Texas then moved to dismiss the complaint on the ground that the suit did not come within the original jurisdiction of the Court. She also moved for a more definite statement or for a bill of particulars and for an extension of time to answer. The United States then moved for judgment. These various motions were denied and Texas was granted thirty days to file an answer. 338 U. S. 806.

Texas in her answer, as later amended, renews her objection that this case is not one of which the Court has original jurisdiction; denies that the United States is or ever has been the owner of the lands, minerals, etc., underlying the Gulf of Mexico within the disputed area; denies that the United States is or ever has been possessed of paramount rights in or full dominion over the lands, minerals, etc., underlying the Gulf of Mexico within said area except the paramount power to control, improve, and regulate navigation which under the Commerce Clause the United States has over lands beneath all navigable waters and except the same dominion and paramount power which the United States has over uplands within the United States, whether privately or state owned; denies that these or any other paramount powers or rights of the United States include ownership or the right to take or develop or authorize the taking or developing of oil or other minerals in the area in dispute without compensation to Texas; denies that any paramount powers or rights of the United States include the right to control or to prevent the taking or developing of these minerals by Texas or her lessees except when necessary in the exercise of the paramount federal powers, as recognized by Texas, and when duly authorized by appropriate action of the Congress; admits that she claims rights, title, and interests in said lands, minerals, etc., and says that her rights include ownership and the right to take, use, lease, and develop these properties; admits that she has leased some of the lands in the area and received royalties from the lessees but denies that the United States is entitled to any of them; and denies that she has no title to or interest in any of the lands in the disputed area.

As an affirmative defense Texas asserts that as an independent nation, the Republic of Texas had open, adverse, and exclusive possession and exercised jurisdiction and control over the land, minerals, etc., underlying that part of the Gulf of Mexico within her boundaries established at three marine leagues from shore by her First Congress and acquiesced in by the United States and other major nations; that when Texas was annexed to the United States the claim

and rights of Texas to this land, minerals, etc., were recognized and preserved in Texas; that Texas continued as a State, to hold open, adverse and exclusive possession, jurisdiction and control of these lands, minerals, etc., without dispute, challenge or objection by the United States; that the United States has recognized and acquiesced in this claim and these rights; that Texas under the doctrine of prescription has established such title, ownership and sovereign rights in the area as preclude the granting of the relief prayed.

As a second affirmative defense Texas alleges that there was an agreement between the United States and the Republic of Texas that upon annexation Texas would not cede to the United States but would retain all of the lands, minerals, etc., underlying that part of the Gulf of Mexico within the original boundaries of the Republic.

As a third affirmative defense Texas asserts that the United States acknowledged and confirmed the three-league boundary of Texas in the Gulf of Mexico as declared, established, and maintained by the Republic of Texas and as retained by Texas under the annexation agreement.

Texas then moved for an order to take depositions of specified aged persons respecting the existence and extent of knowledge and use of subsoil minerals within the disputed area prior to and since the annexation of Texas, and the uses to which Texas has devoted parts of the area as bearing on her alleged prescriptive rights. Texas also moved for the appointment of a special master to take evidence and report to the Court.

The United States opposed these motions and in turn moved for judgment asserting that the defenses tendered by Texas were insufficient in law and that no issue of fact had been raised which could not be resolved by judicial notice. We set the case down for argument on that motion.

We are told that the considerations which give the Federal Government paramount rights in, and full dominion and power over, the marginal sea off the shores of California and Louisiana (see *United States* v. *California*, 332 U. S. 19; *United States* v. *Louisiana*, *supra*) should be equally controlling when we come to the marginal sea off the shores of Texas. It is argued that the national interests, national responsibilities, and national concerns which are the basis of the paramount rights of the National Government in one case would seem to be equally applicable in the other.

But there is a difference in this case which, Texas says, requires a different result. That difference is largely in the preadmission history of Texas.

The sum of the argument is that prior to annexation Texas had both *dominium* (ownership or proprietary rights) and *imperium* (governmental powers of regulation and control) as respects the lands, minerals, and other products underlying the marginal sea. In the case of California we found that she, like the original thirteen colonies, never had *dominium* over that area. The first claim to the marginal sea was asserted by the National Government. We held that protection and control of it were indeed a function of national external sovereignty. 332 U. S. 31–34. The status of Texas, it is said, is different: Texas, when she came into the Union, retained the *dominium* over the marginal sea which she had previously acquired and transferred to the National Government only her powers of sovereignty—her *imperium*—over the marginal sea.

This argument leads into several chapters of Texas history.

The Republic of Texas was proclaimed by a convention on March 2, 1836.[1] The United States[2] and other nations[3] formally recognized it. The Congress of Texas on December 19, 1836, passed an act defining the boundaries of the Republic.[4] The southern boundary was described as follows: "beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande."[5] Texas was admitted to the Union in 1845 "on an equal footing with the existing States."[6] Texas claims that during the period from 1836 to 1845 she had brought this marginal belt into her territory and subjected it to her domestic law which recognized ownership in minerals under coastal waters. This the United States contests: Texas also claims that under international law, as it had evolved by the 1840's, the

[1] 1 Laws, Rep. of Texas, p. 6.

[2] See the Resolution passed by the Senate March 1, 1837 (Cong. Globe, 24th Cong., 2d Sess., p. 270), the appropriation of a salary for a diplomatic agent to Texas (5 Stat. 170), and the confirmation of a chargé d'affaires to the Republic in 1837. 5 Exec. Journ. 17.

[3] See 2 Gammel's Laws of Texas 655, 880, 886, 889, 905 for recognition by France, Great Britain, and The Netherlands.

[4] 1 Laws, Rep. of Texas, p. 133.

[5] The traditional three mile maritime belt is one marine league or three marine miles in width. One marine league is 3.45 English statute miles.

[6] See Joint Resolution approved March 1, 1845, 5 Stat. 797.

Republic of Texas as a sovereign nation became the owner of the bed and sub-soil of the marginal sea *vis-à-vis* other nations. Texas claims that the Republic of Texas acquired during that period the same interest in its marginal sea as the United States acquired in the marginal sea off California when it purchased from Mexico in 1848 the territory from which California was later formed. This the United States contests.

The Joint Resolution annexing Texas [7] provided in part:

> "Said State, when admitted into the Union, after ceding to the United States, *all public edifices, fortifications, barracks, ports and harbors, navy and navy-yards, docks, magazines, arms, armaments, and all other property and means pertaining to the public defence* belonging to said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind, which may belong to or be due and owing said republic; and shall also retain *all the vacant and unappropriated lands lying within its limits,* to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the Government of the United States." [Italics added.]

The United States contends that the inclusion of fortifications, barracks, ports and harbors, navy and navy yards, and docks in the cession clause of the Resolution demonstrates an intent to convey all interests of the Republic in the marginal sea, since most of these properties lie side by side with, and shade into, the marginal sea. It stresses the phrase in the Resolution "other property and means pertaining to the public defence." It argues that possession by the United States in the lands underlying the marginal sea is a defense necessity. Texas maintains that the construction of the Resolution both by the United States and Texas has been restricted to properties which the Republic actually used at the time in the public defense.

The United States contends that the "vacant and unappropriated lands" which by the Resolution were retained by Texas do not include the marginal belt. It argues that the purpose of the clause, the circumstances of its inclusion, and the meaning of the words in Texas and federal usage give them a more restricted meaning. Texas replies that since the United States refused to assume the liabilities of the Republic, it was to have no claim to the assets of the Republic except the defense properties expressly ceded.

In the California case, neither party suggested the necessity for the introduction of evidence. 332 U. S. 24. But Texas makes an earnest plea to be heard on the facts as they bear on the circumstances of her history which, she says, sets her apart from the other States on this issue.

The Court in original actions, passing as it does on controversies between sovereigns which involve issues of high public importance, has always been liberal in allowing full development of the facts. *United States* v. *Texas*, 162 U. S. 1; *Kansas* v. *Colorado*, 185 U. S. 125, 144, 145, 147; *Oklahoma* v. *Texas*, 253 U. S. 465, 471. If there were a dispute as to the meaning of documents and the answer was to be found in diplomatic correspondence, contemporary construction, usage, international law and the like, introduction of evidence and a full hearing would be essential.

We conclude, however, that no such hearing is required in this case. We are of the view that the "equal footing" clause of the Joint Resolution annexing Texas to the Union disposes of the present phase of the controversy.

The "equal footing" clause has long been held to refer to political rights and to sovereignty. See *Stearns* v. *Minnesota*, 179 U. S. 223, 245. It does not, of course, include economic stature or standing. There has never been equality among the States in that sense. Some States when they entered the Union had within their boundaries tracts of land belonging to the Federal Government; others were sovereigns of their soil. Some had special agreements with the Federal Government governing property within their borders. See *Stearns* v. *Minnesota*, *supra*, pp. 243–245. Area, location, geology, and latitude have created great diversity in the economic aspects of the several States. The requirement of equal footing was designed not to wipe out those diversities but to create parity as respects political standing and sovereignty.

Yet the "equal footing" clause has long been held to have a direct effect on certain property rights. Thus the question early arose in controversies between the Federal Government and the States as to the ownership of the shores of navigable waters and the soils under them. It was consistently held that to deny to the

[7] See note 6, *supra*.

States, admitted subsequent to the formation of the Union, ownership of this property would deny them admission on an equal footing with the original States, since the original States did not grant these properties to the United States but reserved them to themselves. See Pollard's *Lessee* v. *Hagan*, 3 How. 212, 228–229; *Mumford* v. *Wardwell*, 6 Wall. 423, 436; *Weber* v. *Harbor Comm'rs.* 18 Wall. 57, 65–66; *Knight* v. *U. S. Land Assn.*, 142 U. S. 161, 183; *Shively* v. *Bowlby*, 152 U. S. 1, 26; *United States* v. *Mission Rock Co.*, 189 U. S. 391, 404. The theory of these decisions was aptly summarized by Mr. Justice Stone speaking for the Court in *United States* v. *Oregon*, 295 U. S. 1, 14 as follows: [8]

> "Dominion over navigable waters and property in the soil under them are so identified with the sovereign power of government that a presumption against their separation from sovereignty must be indulged, in construing either grants by the sovereign of the lands to be held in private ownership or transfer of sovereignty itself. See *Massachusetts* v. *New York*, 271 U. S. 65, 89. For that reason, upon the admission of a State to the Union, the title of the United States to lands underlying navigable waters within the States passes to it, as incident to the transfer to the State of local sovereignty, and is subject only to the paramount power of the United States to control such waters for purposes of navigation in interstate and foreign commerce."

The equal footing clause, we hold, works the same way in the converse situation presented by this case. It negatives any implied, special limitation of any of the paramount powers of the United States in favor of a State. Texas prior to her admission was a Republic. We assume that as a Republic she had not only full sovereignty over the marginal sea but ownership of it, of the land underlying it, and of all the riches which it held. In other words we assume that it then had the *dominium* and *imperium* in and over this belt which the United States now claims. When Texas came into the Union, she ceased to be an independent nation. She then became a sister State on an "equal footing" with all the other States. That act concededly entailed a relinquishment of some of her sovereignty. The United States then took her place as respects foreign commerce, the waging of war, the making of treaties, defense of the shores, and the like. In external affairs the United States became the sole and exclusive spokesman for the Nation. We hold that as an incident to the transfer of that sovereignty any claim that Texas may have had to the marginal sea was relinquished to the United States.

We stated the reasons for this in *United States* v. *California*, p. 35, as follows:

> "The three-mile rule is but a recognition of the necessity that a government next to the sea must be able to protect itself from dangers incident to its location. It must have powers of dominion and regulation in the interest of its revenues, its health, and the security of its people from wars waged on or too near its coasts. And insofar as the nation asserts its rights under international law, whatever of value may be discovered in the seas next to its shores and within its protective belt, will most naturally be appropriated for its use. But whatever any nation does in the open sea, which detracts from its common usefulness to nations, or which another nation may charge detracts from it, is a question for consideration among nations as such, and not their separate governmental units. What this Government does, or even what the states do, anywhere in the ocean, is a subject upon which the nation may enter into and assume treaty or similar international obligations. See *United States* v. *Belmont*, 301 U. S. 324, 331–332. The very oil about which the state and nation here contend might well become the subject of international dispute and settlement."

And so although *dominium* and *imperium* are normally separable and separate,[9] this is an instance where property interests are so subordinated to the rights of sovereignty as to follow sovereignty.

It is said that there is no necessity for it—that the sovereignty of the sea can be complete and unimpaired no matter if Texas owns the oil underlying it. Yet, as pointed out in *United States* v. *California*, once low-water mark is passed the international domain is reached. Property rights must then be so subordinated

[8] The same idea was expressed somewhat differently by Mr. Justice Field in *Weber* v. *Harbor Comm'rs*, *supra*, pp. 65–66, as follows: "Although the title to the soil under the tidewaters of the bay was acquired by the United States by cession from Mexico, equally with the title to the upland, they held it only in trust for the future State. Upon the admission of California into the Union upon equal footing with the original States, absolute property in, and dominion and sovereignty over, all soils under the tidewaters within her limits passed to the State, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, subject only to the paramount right of navigation over the waters, so far as such navigation might be required by the necessities of commerce with foreign nations or among the several States, the regulation of which was vested in the General government."

[9] See the statement of Mr. Justice Field (then Chief Justice of the Supreme Court of California) in *Moore* v. *Smaw*, 17 Calif. 199, 218–219.

to political rights as in substance to coalesce and unite in the national sovereign. Today the controversy is over oil. Tomorrow it may be over some other substance or mineral or perhaps the bed of the ocean itself. If the property, whatever it may be, lies seaward of low-water mark, its use, disposition, management, and control involve national interests and national responsibilities. That is the source of national rights in it. Such is the rationale of the *California* decision which we have applied to Louisiana's case. The same result must be reached here if "equal footing" with the various States is to be achieved. Unless any claim or title which the Republic of Texas had to the marginal sea is subordinated to this full paramount power of the United States on admission, there is or may be in practical effect a subtraction in favor of Texas from the national sovereignty of the United States. Yet neither the original thirteen States (*United States* v. *California*, *supra*, pp. 31–32) nor California nor Louisiana enjoys such an advantage. The "equal footing" clause prevents extension of the sovereignty of a State into a domain of political and sovereign power of the United States from which the other States have been excluded, just as it prevents a contraction of sovereignty (Pollard's *Lessee* v. *Hagan*, *supra*) which would produce inequality among the States. For equality of States means that they are not "less or greater, or different in dignity or power." See *Coyle* v. *Oklahoma*, 221 U. S. 559, 566. There is no need to take evidence to establish that meaning of "equal footing."

Texas in 1941 sought to extend its boundary to a line in the Gulf of Mexico twenty-four marine miles beyond the three-mile limit and asserted ownership of the bed within that area.[10] And in 1947 she put the extended boundary to the outer edge of the continental shelf.[11] The irrelevancy of these acts to the issue before us has been adequately answered in *United States* v. *Louisiana*. The other contentions of Texas need not be detailed. They have been foreclosed by *United States* v. *California* and *United States* v. *Louisiana*.

The motions of Texas for an order to take depositions and for the appointment of a Special Master are denied. The motion of the United States for judgment is granted. The parties, or either of them, may before September 15, 1950, submit the form of decree to carry this opinion into effect.

So ordered.

MR. JUSTICE JACKSON and MR. JUSTICE CLARK took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 13, Original.—October Term, 1949

The United States of America, Plaintiff, v. *The State of Texas*

MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

(June 5, 1950)

MR. JUSTICE REED, with whom MR. JUSTICE MINTON joins, dissenting.

This case brings before us the application of *United States* v. *California*, 332 U. S. 19, to Texas. Insofar as Louisiana is concerned, I see no difference between its situation and that passed upon in the *California* case. Texas, however, presents a variation which requires a different result.

The *California* case determines, p. 36, that since "paramount rights run to the states in inland waters to the shoreward of the low-water mark, the same rationale leads to the conclusion that national interests, responsibilities, and therefore national rights are paramount in waters lying to the seaward in the three-mile belt." Thus the Court held, p. 39, that the Federal Government has power over that belt, an incident of which is "full dominion over the resources of the soil under that water area, including oil." But that decision was based on the premise, pp. 32–34, that the three-mile belt had never belonged to California. The *California* case points out that it was the United States which had acquired this seacoast area for the Nation. Sovereignty over that area passed from Mexico to this country. The Court commented that similar belts along their shores were not owned by the original seacoast states. Since something akin to ownership of the similar area along the coasts of the original states was thought by the Court to have been obtained through an assertion of full dominion by the United States to this hitherto unclaimed portion of the earth's surface, it was decided that a

[10] Act of May 16, 1941, L. Texas, 47th Leg., p. 454.
[11] Act of May 23, 1947, L. Texas, 50th Leg., p. 451.

similar right in the California area was obtained by the United States. The contrary is true in the case of Texas. The Court concedes that prior to the Resolution of Annexation, the United States recognized Texas ownership of the three-league area claimed by Texas.[1]

The Court holds immaterial the fact of Texas' original ownership of this marginal sea area, because Texas was admitted on an "equal footing" with the other states by the Resolution of Annexation. 5 Stat. 797. The scope of the "equal footing" doctrine, however, has been thought to embrace only political rights or those rights considered necessary attributes of state sovereignty. Thus this Court has held in a consistent line of decisions that since the original states, as an incident of sovereignty, had ownership and dominion over lands under navigable waters within their jurisdiction, states subsequently admitted must be accorded equivalent ownership. *E. g., Pollard* v. *Hagan*, 3 How. 212; *Martin* v. *Waddell*, 16 Pet. 367. But it was an articulated premise of the *California* decision that the thirteen original states neither had asserted ownership nor had held dominion over the three-mile zone as an incident of sovereignty.

"Equal footing" has heretofore brought to a state the ownership of river beds, but never before has that phrase been interpreted to take away from a newly admitted state property that it had theretofore owned. I see no constitutional requirement that this should be done and I think the Resolution of Annexation left the marginal sea area in Texas. The Resolution expressly consented that Texas should retain all "the vacant and unappropriated lands lying within its limits." An agreement of this kind is in accord with the holding of this Court that ordinarily lands may be the subject of compact between a state and the Nation. *Stearns* v. *Minnesota*, 179 U. S. 223, 245. The Court, however, does not decide whether or not "the vacant and unappropriated lands lying within its limits" (at the time of annexation) includes the land under the marginal sea. I think that it does include those lands. Cf. *Hynes* v. *Grimes*, 337 U. S. 86, 110. At least we should permit evidence of its meaning.

Instead of deciding this question of cession, the Court relies upon the need for the United States to control the area seaward of low water because of its international responsibilities. It reasons that full dominion over the resources follows this paramount responsibility, and it refers to the California discussion of the point. 332 U. S. at 35. But the argument based on international responsibilities prevailed in the *California* case because the marginal sea area was staked out by the United States. The argument cannot reasonably be extended to Texas without a holding that Texas ceded that area to the United States.

The necessity for the United States to defend the land and to handle international affairs is not enough to transfer property rights in the marginal sea from Texas to the United States. Federal sovereignty is paramount within national boundaries, but federal ownership depends on taking possession, as the *California* case holds; on consent, as in the case of places for federal use; or on purchase, as in the case of Alaska or the Territory of Louisiana. The needs of defense and foreign affairs alone cannot transfer ownership of an ocean bed from a state to the Federal Government any more than they could transfer iron ore under uplands from state to federal ownership. National responsibility is no greater in respect to the marginal sea than it is toward every other particle of American territory. In my view, Texas owned the marginal area by virtue of its original proprietorship; it has not been shown to my satisfaction that it lost it by the terms of the Resolution of Annexation.

I would deny the United States motion for judgment.

SUPREME COURT OF THE UNITED STATES

No. 13, Original—October Term, 1949

The United States of America, Plaintiff, v. *the State of Texas*

MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

(June 5, 1950)

MR. JUSTICE FRANKFURTER.

Time has not made the reasoning of *United States* v. *California*, 332 U. S. 19, more persuasive but the issue there decided is no longer open for me. It is rele-

[1] See the statement in the Court's opinion as to the chapters of Texas history.

vant, however, to note that in rejecting California's claim of ownership in the off-shore oil the Court carefully abstained from recognizing such claim of ownership by the United States. This was emphasized when the Court struck out the proprietary claim of the United States from the terms of the decree proposed by the United States in the *California* case.*

I must leave it to those who deem the reasoning of that decision right to define its scope and apply it, particularly to the historically very different situation of Texas. As is made clear in the opinion of MR. JUSTICE REED, the submerged lands now in controversy were part of the domain of Texas when she was on her own. The Court now decides that when Texas entered the Union she lost what she had and the United States acquired it. How that shift came to pass remains for me a puzzle.

*The decree proposed by the United States read in part:

"1. The United States of America is now, and has been at all times pertinent hereto, possessed of paramount rights *of proprietorship* in, and full dominion and power over, the lands, minerals and other things underlying the Pacific Ocean * * *."

The italicized words were omitted in the Court's decree. 332 U. S. 804, 805.

MINORITY REPORT

(To accompany H. R. 4484)

The undersigned members of the Committee on the Judiciary are strongly opposed to the enactment of H. R. 4484.

President Truman's veto of a similar bill was sustained by a vote of the House of Representatives on August 2, 1946. The Departments of Defense, Justice, Interior, and the Bureau of the Budget are one in opposing H. R. 4484 and have expressed support of Senate Joint Resolution 70 and House Joint Resolution 274, which was originally introduced as House Joint Resolution 131, by the chairman of the committee, Mr. Celler.

The essence of the issue involved in this legislation was clearly pointed out in *United States* v. *Louisiana* (339 U. S. 699, 704) where the Court stated:

> As we pointed out in *United States* v. *California*, the issue in this class of legislation does not turn on title or ownership in the conventional sense. California, like the 13 original colonies, never acquired ownership in the marginal sea. The claim to our 3-mile belt was first asserted by the National Government. Protection and control of the area are indeed functions of national external sovereignty (332 U. S., pp. 31–34). The marginal sea is a national, not a state, concern. National interests, national responsibilities, national concerns are involved. The problems of commerce, national defense, relations with other powers, war and peace focus there. National rights must therefore be paramount in that area.

That is the rational of *United States* v. *California* and was repeated in both the cases of *United States* v. *Texas* (339 U. S. 707) and *United States* v. *Louisiana*, supra.

Since the Supreme Court has held in the cases of California, Texas, and Louisiana that the lands underlying ocean waters off the shores of this country do not belong to the adjacent coastal States and that the powers to control and develop the mineral resources in such lands is vested in the Federal Government, the bill H. R. 4484 would negate those holdings.

In view of the urgent necessity to continue the production of oil which at the present time has been prohibited in those areas, the bill, House Joint Resolution 274, by Mr. Celler, would provide interim relief which would adequately protect the interests of the United States and the respective States.

The proposed joint resolution would provide that the holders of State oil and gas leases covering offshore submerged lands, both within the 3-mile belt of the ocean and on the Continental Shelf beyond the 3-mile limit, may continue operation under such leases provided they comply with certain conditions, as determined by the Secretary of the Interior. Among these conditions is a requirement that such leases were issued prior to December 21, 1948, the filing date of the suits against Louisiana and Texas and were maintained in force and effect up to June 5, 1950, the latter being the date of decision of the Supreme Court in those cases.

It requires that rents, royalties, and other sums payable under the leases subsequent to June 5, 1950, be paid to the Secretary of the Interior for deposit in a special fund in the Treasury, and that the leases provide minimum royalty of 12½ percent.

The Secretary of the Interior would be authorized to exercise such powers of supervision and control as may be vested in the lessor by the terms of the State leases and to impose other reasonable and necessary requirements to protect the interest of the United States.

Where a State lease covers land underlying inland navigable waters, the Secretary would be authorized, with the approval of the Attorney General, to certify that the United States claims no proprietary interest in such lands. The resolution also provides that in the event of a controversy between the United States and a State as to whether or not certain submerged lands are situated beneath navigable inland waters the Secretary would be authorized, with the concurrence of the Attorney General, to negotiate and enter into an agreement respecting the continuation of operations in such lands and the impounding of the revenues therefrom pending the settlement or adjudication of the controversy. It would also authorize the Secretary of the Interior pending the enactment of permanent legislation on the subject to issue, on a basis of competitive bidding, new gas and oil leases on such lands not covered by existing State leases.

All revenues derived from the operations under the proposed resolution, whether from continued State leases or from new leases, would be disposed of as follows: 37½ percent of the moneys received from operation within the seaward boundary of a State would be paid to such State; all other money so received would be held in a special account in the Treasury pending the enactment of legislation providing for final disposition. It also empowers the President in the interest of national security to withdraw from disposition any unleased lands and reserve them for the use of the United States. During war or national emergency the Secretary of the Interior, upon the recommendation of the Secretary of Defense, would be authorized to suspend operations under or terminate any leases of off-shore lands with provision being made for the payment of just compensation to the lessee.

In view of the urgency to resolve this issue at the present time in view of the world-wide crisis, the Federal Government should control the development of these oil resources in our submerged ocean lands so as to benefit all of the people of the United States, to whom the off-shore resources actually belong. The need for some solution even on an interim basis of this vital problem was recognized by a number of organizations such as the United States Chamber of Commerce, the oil industry in general, and such individuals as Gov. Allan Shivers, of Texas, the attorney general of Texas, Price Daniel, and the commissioner of the General Land Office of Texas, Bascom Giles (pp. 1, 2, 3 the hearings on submerged lands before Subcommittee No. 1 the Committee on the Judiciary, 82d Cong., 1st sess.).

Both large and small oil companies, particularly the members of the National Petroleum Council, have gone on record as approving an interim bill that would permit immediate operations along the coast of Texas and Louisiana. Presently there is a stalemate. The oil companies are enjoined from drilling and producing. There is a definite need for oil. This lack may become tragically emphasized if the

usual supply of oil from Iran is cut off. It is imperative, therefore, to get operations in Texas, Louisiana, and California resumed.

All that the interim relief bill does is to postpone for 5 years the final solution as to where title to this submerged treasure lies. Meanwhile vast quantities of oil can be made available. Presently millions of acres of submerged oil lands lie unattended, machinery is rotting, and labor forces are melting away. Thus there is created great losses to the companies involved. These losses can be liquidated by the passage of the interim bill.

Background

From Teapot Dome through Elk Hills, out into the Pacific Ocean, and now into the Gulf of Mexico, the fight for oil goes on with increasing fury.

The United States needs oil vitally. Now that almost every vessel of the Navy, Army, Air Force, Coast Guard, and merchant marine is driven by oil, the powers conferred by the Constitution of the United States, "to raise and support armies," "to provide and maintain a navy," and "to regulate commerce with foreign nations and among the several States," can best be exercised only if we assure an adequate supply of oil, serious depletion or extinction of our oil supplies would be a national tragedy.

The Law of the Land

The Supreme Court of the United States has spoken definitely on the issues involved in this bill at least five times.

In the case of *Pollard's Lessee* v. *Hagan* (2 How. 212, 230), wherein it is said: "For, although the territorial limits of Alabama have extended all of her sovereign power into the sea, it is there, as on shore, but municipal power, subject to the Constitution of the United States" and, of course, the four constitutional powers of the United States cover national defense, maintenance of the Army and Navy, navigation, and the general, external sovereignty as defined in the *Curtiss-Wright case* (299 U. S. 304, 315, 317).

In the *Marianna Flora case* (11 Wheat, 1, p. 41), it was held that the 3-mile zone is a part of the national territorial sovereignty rather than of the State.

There is no case or respectable authority that asserts the fee-simple title to the 3-mile limit or beyond outwardly. Similarly, there is no decision or respectable authority that denies the paramount right to control the 3-mile zone to the littoral national sovereign.

In *United States* v. *Curtiss-Wright Export Corporation* (299 U. S. 304, 315, 317 (1936)), it was held:

It will contribute to the elucidation of the question if we first consider the differences between the powers of the Federal Government in respect of foreign or external affairs and those in respect of domestic or internal affairs. That there are differences between them, and that these differences are fundamental, may not be doubted.

The two classes of powers are different, both in respect of their origin and their nature. The broad statement that the Federal Government can exercise no powers except those specifically enumerated in the Constitution, and such implied powers as are necessarily and proper

to carry into effect the enumerated powers, is categorically true only in respect of our internal affairs. In that field, the primary purpose of the Constitution was to carve from the general mass of legislation powers then possessed by the States such portions as it was thought desirable to vest in the Federal Government, leaving those not included in the enumeration still in the States (*Carter* v. *Carter Coal Co.* (298 U. S. 238, 294)). That this doctrine applies only to powers which the States had is self-evident. And since the States severally never possessed international powers, such powers could not have been carved from the mass of State powers but obviously were transmitted to the United States from some other source. During the colonial period, those powers were possessed exclusively by and were entirely under the control of the Crown. By the Declaration of Independence, "the representatives of the United States of America declared the United (not the several) Colonies to be free and independent States, and as such to have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do."

As a result of the separation from Great Britain by the Colonies acting as a unit, the powers of external sovereignty passed from the Crown not to the Colonies severally, but to the Colonies in their collective and corporate capacity as the United States of America. Even before the Declaration, the Colonies were a unit in foreign affairs, acting through a common agency—namely, the Continental Congress, composed of Delegates from the Thirteen Colonies. That agency exercised the powers of war and peace, raised an army, created a navy, and finally adopted the Declaration of Independence. Rulers come and go; governments end, and forms of government change; but sovereignty survives. A political society cannot endure without a supreme will somewhere. Sovereignty is never held in suspense. When, therefore, the external sovereignty of Great Britain in respect of the Colonies ceased, it immediately passed to the Union. See *Penhallow* v. *Doane* (3 Dall. 54, 80–81). That fact was given practical application almost at once. The treaty of peace, made on September 23, 1783, was concluded between His Britannic Majesty and the "United States of America" (8 Stat., European Treaties).

The Union existed before the Constitution, which was ordained and established among other things to form "a more perfect Union." Prior to that event, it is clear that the Union, declared by the Articles of Confederation to be "perpetual," was the sole possessor of external sovereignty and in the Union it remained without change save insofar as the Constitution in express terms qualified its exercise. The Framers' Convention was called and exerted its powers upon the irrefutable postulate that though the States were several their people in respect of foreign affairs were one. Compare the *Chinese Exclusion case* (130 U. S. 581, 604, 606). In that convention, the entire absence of State power to deal with those affairs was thus forcefully stated by Rufus King:

> The States were not "sovereigns" in the sense contended for by some. They did not possess the peculiar features of sovereignty—they could not make war nor peace nor alliances nor treaties. Considering them as political beings, they were dumb, for they could not speak to any foreign sovereign whatever. They were deaf, for they could not hear any propositions from such sovereign. They had not even the organs of faculties of defence or offense, for they could not of themselves raise troops, or equip vessels, for war (5 Elliott's Debates 212).

It results that the investment of the Federal Government with the powers of external sovereignty did not depend upon the affirmative grants of the Constitution. The powers to declare and wage war, to conclude peace, to make treaties, to maintain diplomatic relations with other sovereignties, if they had never been mentioned in the Constitution, would have vested in the Federal Government as necessary concomitants of nationality.

And in *United States* v. *California* (in 1947, 332 U. S. 18, 37), it was held that the issue was there "squarely presented for the first time," and decided that the State of California—

> is not the owner of the 3-mile marginal belt along its coast and that the Federal Government, rather than the State, has paramount right in and power over that belt, an incident to which is full dominion over the resources of the soil under that water area, including oil.

A year later, speaking through Chief Justice Vinson in *Toomer* v. *Witsell* (334 U. S. 385, 402), it was said:

> While the *United States* v. *California* (332 U. S. 19 (1947)), as indicated above, does not preclude all State regulation of activity in the marginal sea, the case does hold that neither the Thirteen Original Colonies nor their successor States separately acquired "ownership" of the 3-mile belt.

Who Owns the Oceans?

The oceans, including their beds, are the common property of the family of nations and the exclusive property of none.

In modern times no nation claims any jurisdiction over the ocean which will exclude an equal jurisdiction by every other nation. The ocean is regarded as a common highway for mankind. Everyone is free to go and come as he chooses unless interdicted by his own sovereign, or unless he interferes with some power which has been conceded to each nation because it is necessary for its self-protection (International Law, p. 186).

The high seas are the common property of all nations where each has concurrent, and none exclusive, jurisdiction (*Francis* v. *Ocean Ins. Co.* (6 Cow. 404)).

A claim of sovereignty of the English Kings over the British seas was asserted by Gentilis in 1613, and by Selden in 1635.

But such claim seems never to have been made by the Government, and when it came before the courts it was properly repudiated.

These extravagant claims, however, have long since been abandoned, and the freedom of the high seas for the inoffensive navigation of all nations is firmly established, and England, and most, if not all, maritime states have been content to limit the claim to advance their frontier seaward to the extent of 3 miles. That limited extent, however, of maritime territory has been in modern times with remarkable unanimity recognized by the English courts.

Cockburn, Ch. J., says in the same case that the vain and extravagant pretensions which had been formerly made to sovereignty over the narrow seas have long since given way to the influence of reason and common sense. A claim to such sovereignty, at all times unfounded, has long since been abandoned. No one would now dream of asserting that the sovereign of these realms has any greater right over the surrounding seas than the sovereigns on the opposite shores;

or that it is the especial duty and privilege of the Queen of Great Britain to keep the peace on these seas; or that the court of admiralty could try a foreigner for an offense committed in a foreign vessel on all parts of the channel. Indeed it is because this claim of sovereignty is admitted to be untenable that it has been found necessary to resort to the theory of the 3-mile zone.

The question being settled that a nation has no exclusive jurisdiction over the high seas or over the narrow seas which other nations are bound to respect, the question at once arises: Is there no water along its coast over which a nation may assert jurisdiction, or does the common right obtain even to dry land? It is apparent that it is to the interest of every nation to assert jurisdiction over the water along its coasts to some distance from the shore. Absence of such jurisdiction would involve great inconvenience, if not hardship. So, such jurisdiction has been universally conceded. The question has been, What is its extent? The earlier jurists were able to perceive no definite rule, but asserted a definite number of miles, as 100, or as far as a ship could sail in a certain number of days, or as far as one could see. But these were all unsatisfactory, and were not adopted. Finally Bynkershock suggested a rule which was so reasonable that it has been generally adopted. That rule was that a nation has jurisdiction to such distance from the shore as can be defended from the shore. At the time of his writing this distance as represented by the possibility of propelling a cannon shot was about 3 miles. So that distance was adopted. Since certainty is much more necessary than scientific accuracy in the law this distance has never been changed. But in view of the greatly increased range of modern cannon, and of the fact that injury to coast cities by stray shots from belligerent vessels engaged in combat 10 miles from the coast is as great today as it was then when they were 3 miles away, a nation should now have a right to insist on a much wider neutral zone.

The writers on the subject do not agree, not only as to the extent to which the jurisdiction should extend, but also as to whether it is absolute property or merely police jurisdiction, nor do they in general fix any definite rule as to the limit, purpose, or effect of the claim to territorial jurisdiction over the sea.

Manning, Law of Nations (p. 119), limits the purposes of the jurisdiction over the sea—the regulation of fisheries; the prevention of frauds on customs laws; the exaction of harbor and lighthouse dues; and the protection of the territory from violation in time of war between other states.

Merlin, in an article on Mer, in Rep. de Juris (vol. 11, p. 135), contends that the privilege of the 3-mile belt is granted for the purpose of self-defense against attacks in war and smuggling in peace.

And Ortolan, Diplomatic de la Mer (liv. ii, ch. 8), states that the right to the territorial sea is not a right of property; it cannot be said that the state which is the proprietor of the land is also proprietor of this sea. With him agrees Calvo Droit International (liv. v., pp. 199–201).

The 3-mile limit has been generally recognized and acquiesced in by the courts whether it has been formally announced by the Executive or not.

In *Reg.* v. *Keyn* (L. R. 2 Exch. Div. 63, 13 Cox, C. C. 403, 46 L. J. M. C. N. S. 17), Brett, J. A., says:

> There is no reason founded on the axiomatic rules of right and wrong, why the 3 miles should or should not be considered as a part of the territory of the adjacent country. They may have been so treated by general consent; they might equally well have not been so treated. If they have been so treated by such consent, the authority for the alleged ownership is sufficient. The question is whether such a general consent has in this case been proved by sufficient evidence. * * * A general consent of recognized writers of different times and different countries to a reasonable proposition is sufficient evidence of a general consent of nations to that proposition. * * * There is a general consent to a proposition with regard to the 3 miles of open sea adjacent to the shores of sovereign states * * *. The dispute is whether, by the consent of all, certain limited rights are given to the adjacent country, such as a right that the waters should be treated as what is called a neutral zone, or whether the water is, by consent of all, given to the adjacent country as its territory, with all rights of territory, it being agreed by such country, with all others, that all shall have a free right of navigation of way over such waters for harmless passage and some other rights. If the first be true, it is impossible * * * that it can be properly said that the adjacent country has any proprietary right in the 3 miles * * * or any sovereign jurisdiction. If the latter be correct, the adjacent country has the 3 miles as its property, or under its dominion and sovereignty. * * * I am of opinion that it is proved that, by the law of nations made by the tacit consent of substantially all nations, the open sea within 3 miles of the coast is a part of the territory of the adjacent nation, as much and as completely as if it were land—a part of the territory of such nation.

Sir R. Phillimore said there appears to be no sufficient authority for saying that the high sea was ever considered to be within the realm, and notwithstanding what is said by Hale in his treatises De Jure Maris and Pleas of the Crown, there is a total absence of precedents since the reign of Edward III, if indeed any existed then, to support the doctrine that the realm of England exists beyond the limits of counties. But Lindley, J. said:

> It is laid down in English law books of the highest authority that the seas adjoining the English coast are part of the realm of England and are subject to the dominion of the Crown. Indeed, there is considerable authority for saying that those seas are to some distance part of the property of the Crown, subject to the right of the public freely to navigate them. And he states that it appears to him to be now agreed by the most esteemed writers on international law that, subject to the right of all ships freely to navigate the high seas, every state has full power to enact and enforce what laws it thinks proper for the preservation of peace and the protection of its own interests, over those parts of the high seas which adjoin its own coasts and are within 3 miles thereof. But that beyond this limit, or, at all events, beyond the reach of artillery on its own coasts, no state has any power to legislate save over its own subjects and over persons on board ships carrying its flag.
>
> The right to the soil of the fundus maris within 3 miles below low-water mark and to the fishery in it, though granted before Magna Carta, is undoubtedly subject to the rights of all subjects to pass in the ordinary and usual course of navigation and to take the ground there, and to anchor there at their pleasure free from toll, unless the toll is imposed in respect to some other advantage conferred upon them or at least on the public (*Gann* v. *Free Fishers of Whitstable*, 11 H. L. Cas. 192, 20 C. B. N. S. 1, 35 L. J. C. P. N. S. 20, 12 L. T. N. S. 150, 13 Week, Rep. 589.—L. R. A., vol. 46, pp. 264, 265, 266, 267, 268, 269, 270).

Upon the ocean, then, in time of peace, all possess an entire equality. It is the common highway of all, appropriated to the use of all; and no one can vindicate to himself a superior or exclusive prerogative there.

It has been argued that no ship has a right to approach another at sea; and that every ship has a right to draw round her a line of jurisdiction, within which no other is at liberty to intrude. In short, that

she may appropriate so much of the ocean as she may deem necessary for her protection, and prevent any nearer approach.

This doctrine appears to us novel, and is not supported by any authority. It goes to establish upon the ocean a territorial jurisdiction, like that which is claimed by all nations within cannon shot of their shores, in virtue of their general sovereignty. But the latter right is founded upon the principle of sovereign and permanent appropriation, and has never been successfully asserted beyond it (Mr. Justice Story, in *The Marianna Flora case*, 11 Wheat. 1, 41; 6 Laws Ed. 405, 415).

Congress has power "to regulate commerce with foreign nations and among the several States, and with the Indian tribes" (Constitution, art. I, sec. 8), but it has nothing to do with the purely internal commerce of the States, that is to say, with such commerce as is carried on between different parts of the same State, if its operations are confined exclusive to the jurisdiction and territory of that State, and do not affect the other nations or States or the Indian tribes. This has never been disputed since the case of *Gibbons* v. *Ogden* (9 Wheat. 1).

The contracts sued on in the present case were in effect to carry goods from San Francisco to San Diego by the way of the Pacific Ocean. They could not be performed except by going not only out of California, but out of the United States as well.

Commerce includes intercourse, navigation, and not traffic alone. This also was settled in *Gibbons* v. *Ogden*, supra. "Commerce with foreign nations," says Mr. Justice Daniel, for the court, in *Veazie* v. *Moore* (14 How. 568), "must signify commerce which, in some sense, is necessarily connected with these nations, transactions which either immediately or at some stage of their progress must be extra-territorial," (p. 573).

The Pacific Ocean belongs to no one nation, but is the common property of all. When, therefore, the *Ventura* went out from San Francisco or San Diego on her several voyages, she entered on a navigation which was necessarily connected with other nations. While on the ocean her national character only was recognized, and she was subject to such laws as the commercial nations of the world had, by usage or otherwise, agreed on for the government of the vehicles of commerce occupying this common property of all mankind. She was navigating among the vessels of other nations and was treated by them as belonging to the country whose flag she carried. True, she was not trading with them, but was navigating with them, and consequently with them was engaged in commerce. If in her navigation she inflicted a wrong on another country, the United States and not the State of California must answer for what was done. In every just sense therefore, she was, while on the ocean, engaged in commerce with foreign nations, and as such she and the business in which she was engaged were subject to the regulating power of Congress.

Navigation on the high seas is necessarily national in its character. Such navigation is clearly a matter of "external concern," affecting the nations as a nation in its external affairs. It must, therefore, be subject to the National Government (Mr. Chief Justice Waite, in *Lord* v. *Steamship Co.* (102 U. S. 543, 544).

It now is settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under

its dominion and control, the ports, harbors, bays, and other enclosed areas of the sea along its coast and a marginal belt of the sea extending from the coast line outward a marine league, or three geographic miles.

The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction.

All exceptions, therefore, to the full and complete power of a nation, within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source (*Cunard SS Co.* v. *Mellon* (262 U. S. 100, 122, 124).

This right of eminent domain over the shores and the soils under the navigable waters, for all municipal purposes, belongs exclusively to the States within their respective territorial jurisdictions, and they, and they only, have the constitutional power to exercise it. To give to the United States the right to transfer to a citizen the title to the shores and the soils under the navigable waters would be placing in their hands a weapon which might be wielded greatly to the injury of State sovereignty, and deprive the States of the power to exercise a numerous and important class of police powers. But in the hands of the States this power can never be used so as to affect the exercise of any national right of eminent domain or jurisdiction with which the United States have been invested by the Constitution. For, although the territorial limits of Alabama have extended all her sovereign power into the sea, it is there, as on the shore, but municipal power, subject to the Constitution of the United States, "and the laws which shall be made in pursuance thereof" (*Pollard Lessee* v. *Hagan et al.* (3 Howard 212, 230)).

A fair summation of the effect of the authorities seems to be that while there is a conflict of opinion as to the title in the littoral nation to the 3-mile zone, the weight of authority is as set forth by Justice Story in the *Marianna Flora case* (11 Wheat. 1, 41); that the 3-mile zone is a part of the territorial jurisdiction of the Nation in virtue of its general sovereignty. This right of absolute and exclusive control, subject to the common use of all nations for the purpose of navigation, "is founded upon the principle of sovereign and permanent appropriation, and has never been successfully asserted beyond it."

There is no case, nor respectable authority, which asserts the exclusive, fee simple title in any State or nation to the 3-mile zone either as to water or bed.

There is no case, nor respectable authority, which denies the jurisdictional right in the littoral State or nation to that segment of the 3-mile zone abutting its shore.

The preponderating weight of authority and sounder reasoning holds that this right of jurisdiction and control is an attribute of national sovereignty and paramount and exclusive.

The exercise by the States of their municipal power of police conflicts in no way with the paramount and exclusive rights of the Federal Government. "Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of the State," are some of these. "No direct general

power over these objects is granted to Congress; and, consequently, they remain subject to State legislation" (*Gibbons* v. *Ogden*, 9 Wheat. 203).

But neither the police powers exercised for municipal purposes by the States nor the paramount and exclusive rights of the Nation under the Constitution amount to title in any part of the 3-mile zone. The title to all of the oceans, including surface, body, and bed, is in the family of nations—it belongs to the world.

In the exercise of its constitutional powers, the Federal Government may take and remove the soil under its territorial waters. Since the soil itself may be taken, certainly one of the minerals found therein—petroleum—may be conserved for national need in the fulfillment of its constitutional duties, and taken when needed.

In the case of *Greenleaf Lumber Co.* v. *Garrison* (237 U. S. 251), there appears a further extension of this paramount power of Congress to limit or defeat under the commerce clause the property rights of private individuals in the soil under the navigable waters of the United States. While the Court uses as the basis of its decision the right of Congress to control navigation under the commerce clause, nevertheless, the facts of the case show that, irrespective of the language used, the taking of property in that case was only incidentally for the purpose of regulating commerce. It was a taking in fact under the constitutional provision "To provide for the common defense" or "To provide and maintain a Navy."

The lumber company had, under a grant of authority from the State of Virginia, established certain fills in the Elizabeth River, opposite the Norfolk Navy Yard at Portsmouth, Va., for the purpose of impounding logs for its mills. These fills were within the navigable waters of the United States and the harbor lines then established by the Secretary of War.

The War Department, at the suggestion of the Navy Department for the improvement of the river opposite the navy yard, changed the harbor lines. The sole purpose of the change in harbor lines, under the stipulations in the case, was the fact that the United States moored its war vessels in front of the navy yard so that they project out into the channel. Changing the harbor lines, as was done by the Secretary of War in such a manner as to cut off about 200 feet of the lumber company's fill, and dredging up to the new harbor lines, afforded more space to moor naval craft. The United States Supreme Court held that the power of the States over navigable waters is subordinate to that of Congress and the State can grant no right to the soil of the bed of navigable waters which is not subject to Federal regulation or change. The United States was not liable to compensate the owner for the removal of the structure.

And in reference to previous decisions it was said:

> *Philadelphia Company* v. *Stimson* (223 U. S. 605) is directly to the effect that Congress may establish harbor lines, and is not precluded thereby from changing them. There was action by the State and twice by the United States and the relation of such actions and the rights derived therefrom were considered and determined. Rights under the action of the State were asserted by the Philadelphia Co. and assumed to exist by the court in determining the power of Congress. It was said (p. 634): "The exercise of this power (that of Congress) could not be fettered by any grant made by the State of the soil which formed the bed of the river, or by any authority conferred by the State for the creation of obstructions to its navigation." And again. "It is for Congress to decide what

shall or shall not be deemed in judgment of law an obstruction of navigation * * *. The principles applicable to this case have been repeatedly stated in recent decisions of this court."

Philadelphia Company v. *Stimson*, supra, is an epitome of all prior cases. Indeed we might have relied upon it as furnishing all of the elements of decision of that at the bar. It expressed the subordination of the power of the States to the power of Congress, that one exercise of the power by either does not preclude another exercise by either, and that the State can grant no right to the soil of the bed of navigable waters which is not subject to Federal regulation. There was a repetition of this doctrine in *United States* v. *Chandler-Dunbar Co.* (229 U. S. 53).

That the United States may exercise paramount rights in the soil under navigable waters of the United States "to provide for the common defense" or "to provide and maintain a navy" is even more forcibly demonstrated in the case of *Luther J. Bailey and James E. Fulgham* v. *United States* (62 Ct. Cl. 77). In this case, the Navy Department, in pursuance of an act of Congress and a proclamation of the President, was given authority to condemn, for the purpose of establishing a naval base, the site of the Old Jamestown exposition at Hampton Roads, Va. Prior to this time, the plaintiffs had leased from the State of Virginia some 26 acres of submerged land under tidewater adjoining this site for the purpose of maintaining oyster beds. The United States by virtue of the authority of establishing the naval base was authorized to condemn land above the low watermark only. In establishing this base the Navy Department drove a line of piles out into the water, and, by means of suction dredges, pumped a fill between this line of piles and the shore line, thereby cutting off and filling in some 10 acres of the plaintiffs' leasehold with this fill. At the same time, it cut a channel outside this line of piles for the purpose of affording a channel for operating seaplanes and other naval craft. This channel, together with the fill, occupied and destroyed a large portion of the plaintiffs' oyster beds, for which they sought compensation. The Court of Claims held that the right of the United States to utilize submerged lands below low watermark to provide facilities to maintain the Navy existed to the full extent of the determined necessity therefor and did not amount to a taking of private property for public use for which the lessees would be entitled to compensation. The Supreme Court of the United States denied certiorari in this case (273 U. S. 751).

Furthermore, Congress also has authorized the establishment of anchorage areas and regulations in navigable waters in certain specified localities (26 Op. Atty. Gen. 258). In like manner provision has been made from time to time for the location of buoys, lights, cable landings, piers, wharves, and other uses of the submerged lands, "to provide for the common defense" and "to provide and maintain a Navy," as well as to regulate commerce. These facilities were provided without payment of compensation.

The cases thus far discussed definitely establish the rule that the ownership of the navigable waters and the submerged lands under them is in the public represented by the sovereign States and that the States may control and use them in the public interest subject to the paramount right of the United States to control and use them under the powers granted to Congress under the Constitution. When Congress, under its constitutional power, enacts legislation in the public interest that requires the control and use of the navigable waters and

submerged lands, that control and use by the United States is paramount and exclusive and may extend to the actual appropriation or removal of the submerged land itself. If Congress can appropriate the submerged land for national purposes, a fortiori it may appropriate any part thereof, or any mineral therein—such as petroleum.

In the case of *United States* v. *Brewer-Elliott Oil and Gas Company* (249 Fed. 609, 615; affirmed 260 U. S. 77), it was said:

> If the river is not navigable at these locations, then the tribe, as riparian proprietor, owns the bed to the middle of the main channel, and by the terms of the Osage allotment act of June 28, 1906 (c. 3572, 34 Stat. 539), the minerals therein belong solely to the tribe, and are subject to lease only for its benefit. But if the river is there navigable, then by the general rule invoked, by the interveners and defendants, as broadened in this country and in force in Oklahoma, the title to the bed was held in trust for the State, and inured to it when admitted, on an equality with the others, subject to the paramount authority of Congress in the control of navigation to the end of regulating interstate and foreign commerce (*Martin* v. *Waddell*, 16 Pet. 367; *Pollard* v. *Hagan*, 3 How. 212; *The Genesse Chief*, *Scott* v. *Lattig*, 227 U. S. 229; *United States* v. *Cress*, 243, U. S. 316. *Shively* v. *Bowlby*, 152 U. S. 1; *McGilvra* v. *Ross*, 215 U. S. 70.). And the power of the State would then arise to appropriate and dispose of the oil and gas found in such lands, consistently with the above limitation (*Weber* v. *State Harbor Com'rs.*, 18 Wall., 85 U. S. 57; *Hardin* v. *Jordan*, 140 U. S. 371; *Wood* v. *Fowler*, 26 Kan. 682, 40 Am. Rep. 330; *State* v. *Akers*, 92 Kan. 169, 140 Pac. 637, Ann. Cas. 1916B, 543; *State* v. *Nolegs*, 40 Okl. 479, 139 Pac. 943).

In the case of *Weber* v. *Harbor Commissioners* (18 Wall. 57, 65), it was said:

> Although the title to the soil under the tidewaters of the bay was acquired by the United States by cession from Mexico, equally with the title to the upland, they held it only in trust for the future State. Upon the admission of California into the Union upon equal footing with the original States, absolute property in, and dominion and sovereignty over, all soils under the tidewaters within her limits passed to the State, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, subject only to the paramount right of navigation over the waters, so far as such navigation might be required by the necessities of commerce with foreign nations or among the several States, the regulation of which was vested in the General Government.

In the case of *Hardin* v. *Jordan* (140 U. S. 371, 381), it was said:

> With regard to grants of the Government for lands bordering on tidewater, it has been distinctly settled that they only extend to high-water mark, and that the title to the shore and lands under water in front of lands so granted enures to the State within which they are situated, if a State has been organized and established there. Such title to the shore and lands under water is regarded as incidental to the sovereignty of the States—a portion of the royalties belonging thereto and held in trust for the public purposes of navigation and fishery—and cannot be retained or granted out to individuals by the United States (*Pollard* v. *Hagan*, 3 How. 212; *Goodtitle* v. *Kibbe*, 9 How. 471; *Weber* v. *Harbor Commissioners*, 18 Wall. 57). Such title being in the State, the lands are subject to State regulations and control, under the condition, however, of not interfering with the regulations which may be made by Congress with regard to public navigation and commerce. The State may even dispose of the usufruct of such lands, as is frequently done by leasing oyster beds in them, and granting fisheries in particular localities; also, by the reclamation of submerged flats, and the erection of wharves and piers and other adventitious aids of commerce. Sometimes large areas so reclaimed are occupied by cities, and are put to other public or private uses, State control and ownership therein being supreme, subject only to the paramount authority of Congress in making regulations of commerce, and in subjecting the lands to the necessities and uses of commerce. (See *Manchester* v. *Massachusetts*, 139 U. S. 240; *Smith* v. *Maryland*, 18 How. 71; *McCready* v. *Virginia*, 94 U. S. 391; *Martin* v. *Waddell*, 16 Pet. 367; *Den* v. *Jersey Co.*, 15 How. 426.)

In the case of *Wood* v. *Fowler* (26 Kan. 682, 40 Am. Rep. 330), the action was to restrain defendants from cutting and removing ice formed

on the surface of the Kansas River within certain described boundaries. It involved the title of the riparian owner who claimed to own to the center of the stream. The court held that a riparian owner owns only to the bank and not to the center of the navigable stream and that the State holds title to the beds of the navigable streams in trust for all the people subject to the right of the Federal Government with respect to navigation. The court said, in part:

> The riparian proprietor would have no more title to the ice than he would to the fish. It simply is this: That his land adjoins the land of the State. The fact that it so joins gives him no title to that land, or to anything formed or grown upon it, any more than it does to anything formed or grown or found upon the land of any individual neighbor.

The case of *State* v. *Akers* (92 Kan. 169, 140 Pac. 637, Ann. Cas. 1916B, 543) was brought to test the constitutionality of an act of the legislature attempting to regulate the sale and taking of sand and other natural products from navigable rivers and streams for commercial purposes and to provide for payment to the State of royalties for such sand and other products. The court held (quoting from the syllabus):

> In Kansas, all the legislative power that the people possess is vested in the legislature, and it is within the power of the legislature to conserve the use of the products of the public streams for the benefit of all the people by imposing a royalty upon the taking therefrom of sand for commercial purposes, so long as it does nothing either to violate the duty to hold the title as trustee for the benefit of the people, or to interfere with the superior rights of Congress to control navigation.
>
> It is well settled that persons who place improvements on such submerged lands either as riparian owners or under authority of the State, do so with due notice that whatever rights they possess in the land below the mean high-water line are subordinate to the public rights of navigation and to the power of Congress to employ all appropriate means to regulate and protect those rights. Those improvements are not "private property" for which compensation must be made by the United States under the fifth amendment of the Constitution in the event they are injured or destroyed through the exercise of such power by Congress, and such injury or destruction is not the result of the taking of private property but the incidental consequence of the lawful and proper exercise of a governmental power (*Gibson* v. *United States*, 166 U. S. 269; *Scranton* v. *Wheeler*, 179 U. S. 141; *Philadelphia Co.* v. *Stimson*, 223 U. S. 605; *United States* v. *Chandler-Dunbar Co.*, 229 U. S. 53; *Lewis Blue Point Oyster Co.* v. *Briggs*, 229 U. S. 82; *Greenleaf Lumber Co.* v. *Garrison*, 237 U. S. 251; *Willink* v. *United States*, 240 U. S. 572).

In *Stockton* v. *Baltimore and N. Y. R. Co.* (32 Fed. 9), it is said:

> It is significantly asked, Can the United States take the statehouse at Trenton, and the surrounding grounds belonging to the State, and appropriate them to the purposes of a railroad depot, or to any other use of the general Government without compensation? We do not apprehend that the decision of the present case involves or requires a serious answer to this question. The cases are clearly not parallel. The character of the title or ownership by which the State holds the statehouse is quite different from that by which it holds the land under the navigable waters in and around its territory.

In the case of *Gibbons* v. *Ogden* (9 Wheat. 1), the Court had before it acts of the Legislature of the State of New York, enacted for the purpose of securing to Robert R. Livingston and Robert Fulton the exclusive rights of navigation in the navigable waters of that State, with boats propelled by fire or steam. In that case Chief Justice Marshall, speaking for the Court, laid broad and deep the foundation for Federal control over navigation and the navigable waters of the Nation. He said:

> Commerce undoubtedly is traffic but it is something more—it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse.

The power of Congress, then, comprehends navigation within the limits of every State in the Union; so far as that navigation may be, in any manner, connected with "commerce with foreign nations, or among the several States, or with the Indian tribes." It may, of consequence, pass the jurisdictional line of New York, and act upon the very waters to which the prohibition now under consideration applies.

In *Gilman* v. *Philadelphia* (3 Wall. 713, 724) the court said:

Commerce includes navigation. The power to regulate commerce comprehends the control for the purpose, and to the extent necessary, of all the navigable waters of the United States which are accessible from a State other than those in which they lie. For this purpose they are the public property of the Nation, and subject to all the requisite legislation by Congress.

One of the early Federal cases is *Hawkins Point Lighthouse case* (39 Fed. 77). The action was ejectment. Plaintiff claimed title to the submerged soil of the Patapsco River by grant from the State of Maryland; defendant was the keeper of the lighthouse and was defended by the Government, the basis of defense being that the right of the United States to the submerged land and its use to erect a lighthouse upon in aid of navigation was paramount to the right of plaintiff under his grant. The defense was sustained and no compensation was allowed.

But it remained for the case of *United States* v. *Chandler-Dunbar Water Power Co.* (229 U. S. 53), to finally put at rest the rights of riparian owners on navigable streams as against the sovereign. This case was a condemnation proceeding instituted by the United States Government against the Chandler-Dunbar Water Power Co. and others in the district court for the western district. The company was the owner of lands bordering on the St. Mary's River. Appurtenant to such lands was a valuable water power, which had been but partially developed by the defendant. Congress, by section 11 of the act of March 3, 1909 (35 Stat. 815, 820), had declared that all the lands between the ship canal and the international boundary line were necessary for the purposes of navigation. The company, insisting upon its rights as riparian owner to the submerged lands and the flow of the stream, insisted upon compensation in the sum of $3,450,000 for the taking of such rights, which it claimed were its private property and could not be taken without just compensation. The Government insisted upon its paramount title, upon its right as sovereign to take without compensation all the submerged lands, together with the flow of the stream for purposes of navigation. It conceded its obligation to pay for fast lands taken, but denied its liability for taking the submerged lands and the flow of the stream appurtenant thereto, and insisted that Congress was the sole judge of the necessity and that such necessity was not for judicial inquiry. The trial court awarded $550,000 for the undeveloped water power taken, and both parties appealed. The award was set aside and the Court set at rest for all time the claim of riparian owners that as against the Government's needs of navigation their rights in the navigable waters of the Nation and the submerged lands over which they flow were not subservient. Mr. Justice Lurton, speaking for the Court, said:

This title of the owner of fast land upon the shore of a navigable river to the bed of the river is at best a qualified one. It is a title which inheres in the ownership of the shore and unless reserved or excluded by implication, passed with it as as shadow follows a substance, although capable of distinct ownership. It is subordinate to the public right of navigation, and however helpful in protecting the owner against the acts of third parties, if of no avail against the exercises of

the great and absolute power of Congress over the improvement of navigable rivers. That power of use and control comes from the power to regulate commerce between the States and with foreign nations. It includes navigation and subjects every navigable river to the control of Congress. All means having some positive relation to the end in view which are not forbidden by some other provision of the Constitution are admissible. If, in the judgment of Congress, the use of the bottom of the river is proper for the purpose of placing therein structures in aid of navigation, it is not thereby taking private property for a public use, for the owner's title was in its very nature subject to that use in the interest of public navigation. If its judgment be that structures placed in the river and upon such submerged land are an obstruction or hindrance to the proper use of the river for purposes of navigation, it may require their removal and forbid the use of the bed of the river by the owner in any way which in its judgment is injurious to the dominant right of navigation.

The case was followed in *Lewis Blue Point Oyster Co.* v. *Briggs* (229 U. S. 82, 232). In this case the plaintiff held title to shallow submerged lands in Great South Bay in the State of New York. The foundation of its tital was a royal grant when New York was a dependency of Great Britain. The Government in aid of navigation arranged to cut a channel across this shallow land, thus destroying plaintiff's oyster beds. The State court sustained such right of the Government. This judgment was affirmed, and no compensation was allowed.

The foregoing amply demonstrate that navigation is an incident of commerce. It must also be, to the same extent, an incident to national defense and maintenance of the Navy. As stated in *Gilman* v. *Philadelphia* and affirmed in the other cases herein cited, commerce includes navigation and the power to regulate commerce comprehends the control for the purpose and to the extent necessary of the navigable waters and submerged lands of the United States; and for this purpose they are the public property of the Nation, and subject to all the requisite legislation by Congress. The control to the extent necessary means paramount control. It can mean nothing less. The 3-mile zone off the coast of California is part of the navigable waters of the United States, and therefore Congress has paramount power to control and to appropriate its bed or any part thereof, if and when such power is by it asserted.

Navigation is an incident to national defense and maintenance of the Navy. It cannot successfully be maintained that navigation is not as essential to national defense and maintenances of the Navy as it is to commerce. The fact that most of the cases were decided under the commerce clause of the Constitution does not justify an inference that the decisions of the courts would have been different if they had been predicated on the powers to provide for the national defense and maintenance of armies and the Navy. The powers to regulate commerce, to provide for national defense, to raise and support armies and to provide and maintain a navy are so correlated that the exercise of one usually includes or fulfills the requirements of the others.

History has amply demonstrated that the Navy has served, and is now serving, in a large measure as an instrumentality to protect and regulate commerce and navigation. It can also be shown beyond peradventure that various provisions that have been made for national defense have assisted materially in improving navigation, regulating commerce and maintaining the Navy, and improvements for navigation were provided for warships as well as for commercial ships.

Specific Objections to H. R. 4484

In the discussion of H. R. 4484 and other similar bills concerning resources in submerged coastal lands, there have been introduced many false premises. One is that before the decision of the Supreme Court in *U. S.* v. *California* (332 U. S. 19), dated June 23, 1947, our various coastal States owned the submerged lands seaward of their shores, and what the pending bill and similar bills do is restore to the States a part of that which they always owned. That is utterly ridiculous and the sooner this myth is dispelled the better for all concerned. Only then will we dash away the absurd claims that are now being made to untold resources and millions of square miles of mineral riches submerged in coastal lands, which are and should be part of the heritage of all of the people of the United States—not some of the people.

The bill under discussion and similar bills have been called the "tidelands" bills. That is a misnomer. "Tidelands" constitute the land between low and high water—the land between the ebb and flow of the tide. There has never been any question (and the Supreme Court has so affirmed) that the individual States own the "tidelands" as well as the beds of their inland navigable waters. Our Federal Government has never challenged the right of the State to these "tidelands" and what is contained therein. Nor does the California case, supra, militate against this right. But there has been gross misrepresentation by many who are sponsoring the instant bill and similar bills. "Tidelands", therefore, are not in controversy. What is in controversy are the submerged coastal lands seaward of the "tidelands" which start at low-water mark exactly where the "tidelands" end. It must be emphasized that there has never been any decision of the Supreme Court concerning submerged coastal land that has judged same to belong to the adjacent States.

The Supreme Court held, in the California case, that this submerged coastal land seaward of the "tidelands" belongs to the United States. Of course, the Congress can nullify and liquidate this decision but—shall it do so? We say emphatically it should not.

It is well to keep in mind that the bills treat of three types of land: (1) The real "tideland"—land between high watermark and low watermark; (2) the marginal belt which lies from the line of low tide seaward three geographical miles; and (3) the Continental Shelf which extends indefinitely seaward from the end of the 3-mile marginal belt. Of these three types of lands, submerged under water, only the first really belongs to the State. The other two should be and are within the sovereign ownership of the United States.

It is well to keep in mind what Chief Justice Vinson stated on June 8, 1948, in the case of *Toomer* v. *Witsell* (334 U. S. 385, 402), which was decided 1 year after the decision in the *U. S.* v. *California* aforesaid.

> While *United States* v. *California* (332 U. S. 19 (1947)), as indicated above, does not preclude all State regulation of activity in the marginal sea, the case does hold that *neither the Thirteen Original Colonies nor their successor States acquired "ownership" of the 3-mile belt.*

(The italics in the quoted statement are by us.)

Thus, the law of the land today is that the States do not own the 3-mile marginal belt nor yet that portion of the Continental Shelf beyond.

This Continental Shelf area off the United States proper is about 290,000 square miles (an area larger than Texas), and off Alaska is estimated to be 600,000 square miles. Along the Atlantic coast its maximum seaward limit is about 250 miles, and the Gulf of Mexico is 200 miles, and off the coast of Alaska it extends almost to the Aleutian Islands. Thus from the very location and expanse of the Continental Shelf, serious questions of international law and of foreign relations are inextricably woven. Naturally, neither of those two subjects are any concern of a State. But the sponsors of the bill in most cavalier manner dispose of rights in this Continental Shelf.

Oil, today, is comparable to the gold of the nineteenth century. In fact, it is often referred to as "black gold." Its quest has stimulated greed and plunder and the oil buccaneers of the twentieth century have much more to gain than Captain Kidd, LaFitte, and the motley crews who made the history of piracy so colorful. The claims set forth by the proponents of this bill are unique. If oil were not the sunken treasure of our day, these bills would never see the light of a committee room. If, for example, the resources were agricultural in nature, rather than mineral—would their acquisition be so avidly pursued? When the precious black liquid is involved, all inhibitions are cast aside and the oil interests seek to foreclose on Mr. Neptune himself. They give little heed to the intricate international questions that may develop from their predatory interests. No conservation plans are proposed. The floors of the sea will be as debauched as the cottonfields of the South and the vast ranges of the West.

The proponents of the bill assume that, from 1776 onward, the individual States owned and still own the submerged coastal lands. To support this postulate, they rely on State boundaries. But the State boundaries have no necessary connections or relations with title to lands. For example, the United States does not dispute California's 3-mile boundary. Therein the State exercises police and taxing powers. It exercises those powers likewise in the vast territory of uplands within California that are owned by the United States. A national park is a good example of land owned by the United States that is within a State boundary.

Solicitor General Perlman stated, in an appearance before the House Judiciary Subcommittee:

> However, it was not until 1859 that the first of our Original Thirteen States even undertook to project its seaward boundary as far as the 3-mile limit. And whether a State may adopt a boundary beyond the 3-mile limit, the outer boundary of the United States, is also a matter which has no necessary relation to the ownership of the submerged lands. Furthermore, that is a problem involving the relationship of the United States to other countries in the family of nations, and is an inappropriate subject for domestic legislation, in the absence of the usual negotiations, understandings, and agreements with other nations entered into by that branch of our Government charged with the handling of our foreign affairs.

One of the most important reasons advocated on behalf of the bill, H. R. 4484, was that this bill would terminate the litigation that has arisen because of the present controversy over the submerged lands. In our opinion, however, the enactment of this bill will have the opposite result; namely, that the volume of litigation will be increased because of the numerous questions of phraseology and of substance that are to be found in the bill as it has been reported. Its startling claims, its deliberate vagueness, its protection of oil "interests" as

against the national interest will stimulate controversy for decades. It will create a field day for lawyers.

Under title I, section 2, the word "boundaries" (of States) is used in connection with what is included in the term "lands beneath navigable waters" so as to include the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed when the State became a member of the Union or as heretofore or hereafter approved by the Congress or as extended or confirmed pursuant to section 4 of the bill. Section 4 permits any State that has not already done so to extend its seaward boundary three geographical miles from the coast line. This immediately requires an understanding of what is meant by the phrase "coast line."

In section 2 (b)—

> coast line means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, which include all estuaries, ports, harbors, bays, channels, straits, historic bays, and sounds, and *all other bodies of water which join the open sea.*

It is obvious from such a definition that great difficulty would be encountered in determining the exact location of a coast line. It would be necessary to establish where the line of ordinary low water along a coast directly contacted the open sea. That would require determining what is meant by "the open sea." In regard to the second phrase of the definition it is necessary to know what is meant by such things as the seaward limit, historic bay, and "*all other bodies of water.*" The vagueness and the generality of such phrases are an open invitation to litigation, and such litigation would involve the major basic premise in solving the problem which this bill is alleged to accomplish. The Gulf of Mexico is one of "all other bodies of water." Thus where the Gulf of Mexico comes in direct contact with the open sea might well mark the outward limit of an adjoining State's "inland waters." That might conceivably extend the State's claim hundreds of miles out.

Under section 4 of title II, the States are permitted, if they have not already done so, to extend their seaward boundaries three geographical miles. In the case of California this provision repeals the law as enunciated by the Supreme Court in *United States* v. *California* (332 U. S. 19, 1947).

Under the same section permitting the extension of seaward boundaries provision is made that—

> any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line.

What is meant by "otherwise"? It also provides that nothing in this section should be construed as prejudicing the existence of any State's seaward boundary beyond three geographical miles if such was provided for by its constitutional laws prior to or at the time such State became a member of the Union or if it has been heretofore or hereafter approved by the Congress.

Particular notice should be taken of the word "otherwise" concerning the assertions of any claim based on a State indicating an intent to so extend its boundaries. The use of the word "otherwise" is so broad and general that it is impossible to conjure up any limitation whatsoever, and Congress is asked to place its approval upon such nebulous claims and in so doing would approve and confirm them.

"Otherwise" might include some obscure, ancient declaration of a State's boundary. The grant of some old fishing site might well be the base of a State's claim to more submerged land. Thus Congress is asked to accept such a scheme without limitation. It is like buying a pig in a poke.

Included in "lands beneath navigable waters" are not only such lands as tidelands—which were never claimed by the United States, as well as inland waters—which likewise were not claimed by the United States, but also lands extending from the nebulous coast line into the sea for three geographical miles. The three geographical mile limit, however, would not apply where any State in the past or at present claimed boundaries beyond it. The effect of the exceptions set forth in the bill would result in an extension of State boundaries into what is known as the Continental Shelf, and such provision would apply to past, present, and future extensions.

Under title II of this bill, the United States quitclaims all the lands beneath navigable waters within State boundaries as defined in the bill. Again it should be noted that in some instances this would mean that title to lands in the Continental Shelf and far beyond the 3-mile limit would be vested in certain States. In this regard again a clear distinction should be drawn between what are truly "tidelands"; that is, lands beneath the high-water mark and the low-water mark and lands beneath the inland waters, neither of which have ever been claimed by the Federal Government, and the submerged coastal lands and certain areas of the Continental Shelf which this bill gives to the States. Since the California case was decided, title to the submerged coastal lands did not vest in the States, and it was specifically held that the United States has paramount rights therein. In this particular case no claim on the part of the State to an area of the Continental Shelf was involved. It is apparent that in granting and confirming title to these lands in the States, Congress is assuming a judicial function.

It is in the phraseology of the basic definitions set forth in this bill that perplexing legal problems are cloaked with apparent legality. The rights of States to the title of lands beneath navigable waters is predicated upon false assumptions of a necessary relationship between the boundary of a State to the ownership of the lands. The proper functioning of the sovereignty of a State within its boundaries is in no way predicated upon ownership over lands wherein it functions. Nevertheless, Congress is asked to approve this false premise and give to the States the valuable rights of all the people of the country. In the bestowal of these lands upon the States by the Federal Government, the bill provides that nothing therein should interfere with the traditional Federal regulatory powers for the purposes of commerce, navigation, national defense, and international affairs, but specific exemption is made for any Federal proprietary rights of ownership.

With regard to the very essence of this problem, namely the conservation of these lands for national defense, the solution set forth is the proviso that in time of war or when necessary for national defense the right of first refusal to purchase at the prevailing market price these natural resources or the lands by proceeding in accordance with due process of law and paying just compensation. To

put it bluntly the United States is asked to give away its possessions and then in time of war buy them back at the prevailing market price.

None of the proceeds of the lands beneath navigable waters within State boundaries would be allotted to the Federal Government, but the Federal Government gives to the State 37½ percent or proceeds from lands within the Continental Shelf outside of State boundaries. That is what is called "reciprocity."

Title III of the bill deals with that portion of the Continental Shelf which lies outside of the State boundaries. Again the distinction should be noted that this title III does not include all the Continental Shelf because under titles I and II of this bill, title of specific portions is vested in certain States.

Under section 8 of title III jurisdiction of the Continental Shelf area wherein title has not been confirmed in certain States by this bill belongs allegedly to the United States. We say "allegedly" as we shall see. Specifically section 8 declares it to be the policy of the United States that the natural resources of the subsoil and sea bed of the Continental Shelf "appertain to the United States." Thus even along the Continental Shelf outside of State boundaries the authors of the bill do not give full, absolute title to the United States. The resources therein only "appertain" to the United States.

When a comparison is made between section 8 dealing with the control by the United States over the Continental Shelf outside State boundaries and section 3 concerning the right of the States to lands beneath navigable waters within State boundaries, a marked distinction readily appears. Insofar as the rights of the States are concerned, the bill clearly quitclaims all the involved lands and resources to the States but where the rights of the United States are concerned the lands and natural resources "appertain." What is meant by "appertain"? Again much controversy would ensue to determine its very meaning. One cannot but help wonder as to the reason for the difference. The very use of the word "appertain" raises a serious question as to the ownership of these lands by the United States.

This same section 8 provides that a State may exercise its police power over that portion of the Continental Shelf which would be within its boundaries if such boundaries were extended seaward to the very edge of the Continental Shelf. Here is a situation wherein there is no basis whatsoever for the exercise of police power yet it is nevertheless given so long as it is consistent with applicable Federal laws. Particular note should also be made of the provision that the police power includes, but is not limited to, the power of taxation, conservation, and control of the manner of conducting geophysical explorations, but at the same time the character as high seas of the waters above this particular land and the right to their free and unimpeded navigation shall be maintained. To characterize such a provision as a paradise for a State is a gross understatement of its true effect.

Under section 9 wherein provision is made for the leasing of the Continental Shelf, the Secretary of the Interior is compelled to issue leases when certain express conditions are met. The use of the word "shall" under the rules of construction render such action mandatory whereas, at best, it should be discretionary in order to meet the vital needs of conservation for national defense.

Another inadequacy of the leasing provisions of this bill is the absence of adequate provisions to prevent an undue concentration in the hands of a few powerful interests of the control over the development of these natural resources. It has always been a Federal policy to prevent such undue concentration, but under this bill there is no limitation placed on individual holdings.

Under section 14 no State or person holding under a State lease would be required to account to the United States for any operation conducted prior to the effective date of this act.

Section 18 of this bill gives any oil company lessee the right to interplead the United States in any action filed in the United States district court having jurisdiction over any disputed area. Thus the United States is compelled to participate in a district court proceeding in order to protect the interests of the people. Such compulsory interpleader is unprecedented. However, a State is not subjected to that same treatment as the Federal Government since under the bill a State can be only interpleaded with its consent. Why should the Federal Government be treated as a stepchild in this regard? At least the consent of the United States should be conditioned upon like consent of the State involved.

All the objectionable features of this bill which have been set forth lead to the indisputable conclusion that the passage of this bill would not promote the best interests of all the people of the United States but would merely increase the very litigation it is purported to obviate.

This bill makes no contribution toward a solution of the basic issue involved which is the fundamental question of ownership of these submerged lands. It is the people of the United States—not just the people of a given State—who are the rightful owners of these submerged lands, and it is in their interest that the conservation and production of the vast resources located therein would be more effectively carried on by private interest under Federal rather than under State control.

CONCLUSION

The law of the land hereinabove quoted and cited completely sets at naught every alleged basis for the contentions made in support of H. R. 4484, our calling card for war. Every mile of our littoral 3-mile zone and Continental Shelf would be sown with seed of international "incidents."

It took ages of negotiation after the first 3-mile cannon shot to gain the acceptance of the 3-mile control zone as a part of international law by all civilized nations. It is the law of the world. It can be changed only by following the same tedious way by which it was originally adopted, or by war.

Of course, if a Presidential veto could be overridden and if it could be conceivable that the Supreme Court of the United States would reverse itself, and all other known law, the Congress might succeed in giving any State that wished to sue the vested rights of the Nation to exercise its constitional powers. In such event, our Nation would stand impotent to defend itself and its constituent States and Territories, leaving its power "to provide for the common defense" divided into as many separate parts as there were suits.

The words written into their constitution by the delegates of the several States would remain, but only as a memorial to the folly of

the Congress that repudiated them and shirked its highest duty—to defend itself and each of its constituent States and Territories.

There can be no question but that each State admitted to the Union after the adoption of our Constitution was admitted on an equal footing with the Thirteen Original States.

Be it not thought, because there is no specific grant conveying fee-simple title to the 3-mile zone into the United States of America, that the right of the Nation to conserve, take, and use the petroleum in the bed of the marginal sea is less clear or strong. This right is inherent in the sovereignty of the National Government, which existed long before the Constitution and which was confirmed by that document.

No one has title to the air he breathes, nor a grant of the right to use any of it; but so fixed and recognized is that personal right that when one deprives another of that right the law calls it murder. The right of all the people of the United States, acting through their National Government to use this oil is like the personal right to breathe the air—necessary to the maintenance of constitutional vigor.

This bill controverts and virtually seeks to repeal all known pertinent law. It denies the right of the National Government to take and use any of the elements in the bed of the ocean necessary for national defense, without paying the littoral States therefor in accordance with the law of eminent domain. But eminent domain has never been held to apply to any issue arising out of the bed of the marginal sea. To the contrary, the Supreme Court has held in a long line of decisions that where the right existed, the National Government could exercise it without any compensation.

Thus the issue is clear. If we vote for this bill, we vote to cripple national defense—and at such a time.

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